

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Civil Action No. 05-11395-RCL

PATRICIA BERGEVINE,
Plaintiff,

v.

PEASE & CURREN, INC, PEASE & CURREN
MATERIALS, INC., FRANCIS H. CURREN, JR.,
ROBERT H. PEASE, JR., FRANCIS H. CURREN,
III A/K/A KIP CURREN AND MEREDITH A.
CURREN.

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO
PRECLUDE DEFENDANTS FROM INTRODUCING EVIDENCE AS TO DAMAGES
AND FOR SANCTIONS DUE TO SPOILIATION**

INTRODUCTION

NOW COMES the Plaintiff Patricia Bergevine (the "Plaintiff") and hereby moves this Honorable Court to preclude the Defendants Pease & Curren, Inc., Pease & Curren Materials, Inc., Francis H. Curren, Jr., Robert H. Pease, Jr., Francis H. Curren, III a/k/a Kip Curren and Meredith Curren (the "Defendants") from introducing evidence relating to damages as a result of the intentional destruction of computer files, ledger cards, assay tickets and other relevant documents, all of which are central to this litigation, and which the Defendants have admitted to incinerating or deleting prior to, and since the commencement of, this litigation. In support hereof, the Plaintiff states as follows:

PROCEDURAL HISTORY

On or about July 1, 2005, Plaintiff filed suit against the Defendants Pease & Curren, Inc., Pease & Curren Materials, Inc., Francis H. Curren, Jr., Robert H. Pease, Jr., Francis H. Curren, III a/k/a Kip Curren and Meredith Curren (the “Defendants”) for breach of contract, fraud, violations of the Racketeer Influence and Corrupt Organization Act (RICO), 18 U.S.C. §§ 1962(a) and 1962 (c), negligent infliction of emotional distress¹ and intentional infliction of emotional distress as a result of Defendants’ fraudulent conduct and business practices. The Defendants answered Plaintiff’s Complaint (the “Defendants’ Answer”) on August 9, 2005, denying Plaintiff’s allegations.

On March 10, 2006, the Plaintiff served the Defendants with, among other things, Plaintiff’s Request for Production of Documents Propounded Upon the Defendants Francis H. Curren, Jr., Francis H. Curren, III a/k/a Kip Curren, Robert H. Pease, Jr., Meredith Curren, Pease & Curren, Inc. and Pease & Curren Materials, Inc. Thereafter, on or about April 25, 2006, the Defendants filed a Motion for a Protective Order to Defer Depositions and Answers to Interrogatories for Six Months. Plaintiff opposed same on May 1, 2006 and filed a Cross-Motion to Compel the Defendants to Participate in Discovery and for Sanctions. On May 24, 2006, the Court (Lindsay, J.) denied the Defendants’ Motion for a Protective Order and granted Plaintiff’s Cross-Motion (the “May 24, 2006 Order”). Thereafter, via e-mail, telephone and letter, Plaintiff sought responses to Plaintiff’s Request for Production of Documents, as well as answers to Plaintiff’s First Set of Interrogatories and firm dates for the depositions of the Defendants. On

¹ The Parties intend to file a Stipulation of Dismissal as to Plaintiff’s Counts for Negligent and Intentional Infliction of Emotional Distress.

June 15, 2006, Plaintiff received Defendants' Responses to Plaintiff's Request for Production of Documents.

On June 29, 2006, Meredith Curren appeared for her deposition and on July 25, 2006, Francis H. Curren, III appeared for his deposition. During the deposition of the Defendant Francis H. Curren, counsel for the Plaintiff inquired as to the location of certain requested documents and was informed that the documents had been incinerated, discarded or deleted². A

² MR. ACETO: Earlier we were talking about the ledger cards. When's the last time you threw out or destroyed ledger cards?

MR. ARONSON: Objection.

WITNESS: We dispose of the ledger cards on an annual basis every three years.....

MR. ACETO: So in what month would that be that it's done, in April, then?

WITNESS: I'm not sure, April, May. Spring cleaning.

MR. ACETO: You will throw out anything that is more than three years old?

WITNESS: As far as customer things. The ledger cards, one of the administrative assistants will monitor them and go through them, and she will pull ledger cards that have no -- jobs haven't come in in two years and then she will make a note to the salesperson

MR. ACETO: So you say the administrative assistants find the ones that are either two years old or --

WITNESS: With no shipments, right, pulls them.

MR. ACETO: I'm asking you what the procedure is for throwing them away, as you just said?

WITNESS: Incineration.

MR. ACETO: Okay. And what are the time limitations as to when you throw them away?

WITNESS: Well, if we haven't had a shipment in two years, then we've declared them not a customer.

MR. ACETO: But you just said you will try to win them back.

WITNESS: Yeah, I said that.

MR. ACETO: But you don't keep the ledger card to try to win them back?

WITNESS: No, no, it goes in the computer, the salesmen's computer.....

MR. ACETO: What about the -- do you have a distinct memory in the spring of this year throwing away, as you said, ledger cards in the spring of this year?

WITNESS: Yeah, yeah.

MR. ACETO: Okay. How many ledger cards were thrown away in the spring of this year?

WITNESS: I know this doesn't register on the computer.

MR. ACETO: So you're indicating about --

WITNESS: I'm going to say 50, I'm going to guess.

MR. ARONSON: Don't guess. If you can give an estimate, do that.

WITNESS: Can I estimate 50?

MR. ARONSON: You can estimate whatever you think the figure is, but don't guess.

WITNESS: I really don't know.....

MR. ACETO: What about the assay tickets, do you save the assay tickets?

WITNESS: Yes.

MR. ACETO: For how long do you save the assay tickets?

WITNESS: Six months.

MR. ACETO: Have you thrown any assay tickets away since this lawsuit started?

WITNESS: Yeah.

MR. ACETO: When did you last throw away assay tickets?

true and correct copy of the Deposition Transcript of Francis H. Curren, III (the "Curren Transcript") is attached hereto as *Exhibit A*.

WITNESS: A month or two ago.

MR. ACETO: Did you have any discussions with Miss Curren that these might be of some use in the litigation?

WITNESS: Miss Curren?

MR. ACETO: Yeah, your sister over there, sis you have discussion with her of how they may be of value in the litigation.

WITNESS: No....

MR. ACETO: Did you tell any of the employees not to throw them away because of the pending litigation?

WITNESS: The assay tickets -- I incinerate them myself....

MR. ACETO: When was the last time you incinerated them?

WITNESS: About a month and a half ago.....

MR. ACETO: Any assay tickets left over from when Miss Bergevine worked there?

WITNESS: No.

MR. ACETO: When would those have been incinerated?

WITNESS: When she worked there.

MR. ACETO: Contemporaneously with when she worked there?

WITNESS: Yeah.

MR. ACETO: Or within six months, I guess you're saying; you say you throw them out six months later?

WITNESS: It's possible that when she left in June that the assay tickets went out at the end of the year or thereabouts. Could be a month either side. Maybe at the end of the year. If Jay was throwing them out, he might have been a little busy and not thrown them out until February.....

MR. ACETO: What about the current tracking system, have you taken any steps since Miss Curren's deposition to get a copy of the tracking system pertaining to Miss Bergevine's clients.

WITNESS: Have I? No.

MR. ACETO: Do you know if anyone in the company has attempted to do that?

WITNESS: There's no documents.

MR. ACETO: There's no documents?

WITNESS: There's no documents.

MR. ACETO: There's no documents relating to Miss Bergevine's employment?

WITNESS: No.

MR. ACETO: Why is that?

WITNESS: Because we don't keep documents that we don't need for more than two or three years....

MR. ACETO: But you have a computer system, so why can't you access the documents in the computer system and print them? The tracking system is in a computer; correct?

WITNESS: The tracking system is in the computer.

MR. ACETO: Yeah, so has anyone in the company made an effort to print out those documents related to Miss Bergevine's customers?

WITNESS: No.

MR. ACETO: Do they exist?

WITNESS: No.

MR. ACETO: Why don't they exist?

WITNESS: Because I don't keep them around.

MR. ACETO: So are you testifying that somebody at the company deleted the tracking system relating to Miss Bergevine's customers?

WITNESS: I certainly hope so.

MR. ACETO: Why is that?

WITNESS: Because we got this computer system with 8000 customers in it, and maybe 3000 of them are real customers, and I am constantly trying to get people to get all the stuff out of the computer.....

During Francis H. Curren, III's deposition, counsel for the Plaintiff requested the following documents (all of which were previously requested in Plaintiff's Requests for Production of Documents and in the Schedule A's attached to the Defendants' deposition notices) from counsel for the Defendants: i) copies from the "tracking" system (electronic or paper); ii) copies of settlement reports (electronic or paper); iii) client account documents (electronic); iv) ledger cards; v) assay tickets; vi) correspondence with clients; vii) call logs for dental customers; viii) tax documents and financial records from 1996 to present; ix) personnel files for the Plaintiff and an employee named Bethany Warburton; x) copies of complaints allegedly made against the Plaintiff; and xi) contact and availability information for the Defendant Robert H. Pease, Jr. Both Defendants' Counsel and the Defendant Meredith Curren indicated that the majority of the documents requested had either been incinerated or deleted from their computers.

FACTUAL BACKGROUND

As alleged in Plaintiff's Complaint, the Plaintiff served as an independent contractor for the Defendants from August, 1996 through December, 2001, and as an employee of the Defendant Pease & Curren, Inc. from December, 2001 through July, 2002. *See* Plaintiff's Complaint, dated July 1, 2005 ("Complaint"). In or around June, 2002, the Plaintiff and another colleague discovered discrepancies between two (2) databases at the Defendants' offices, indicating the apparent systematic defrauding of the Defendants' customers and employees. *See* Complaint. In or around July, 2002, the Plaintiff gave her notice to the Defendants and reported her suspicions and findings to the Federal Bureau of Investigation and, upon the advice of the FBI, to the Rhode Island State Police ("RISP").

On information and belief, the RISP took on the investigation of the Defendants, and in or around the first week of February, 2003, the RISP raided the offices of the Defendants pursuant to a search warrant. On further information and belief, the Defendants were aware that the RISP took a “mirror” copy of the databases in question and that the RISP would continue to investigate the allegations.

During the deposition of Francis H. Curren, III, Mr. Curren stated that there is a “tracking system” which contains information on lots or jobs assayed for their precious metal content. The “tracking system” is the database which the Plaintiff’s colleague discovered. *See Complaint*. The information in the “tracking” database was also recorded from the assay tickets. *See Exhibit A*, p. 98. Thereafter, the information from the assay tickets, or the “tracking system” would be modified (fraudulently, as alleged by the Plaintiff), and transferred to the ledger cards, by either Mr. Curren or another Defendant Mr. Pease. The “new” information from the ledger card would then be entered into a second computer database from which the settlement reports were generated. *See Exhibit A*, p. 98-99. In order to determine how much each amount of metal was modified and reduced, a comparison of the assay ticket or “tracking system” to the ledger cards or settlement reports is necessary. *See Complaint*. Mr. Curren also stated that he had a list of “charges” which he backed out of the numbers on the assay tickets in order to obtain the numbers on the ledger cards, but the list of charges has been thrown away. *See Exhibit A*, p. 81-88.

LEGAL ARGUMENT

I. The Defendants should be precluded from offering any evidence relating to damages because they incinerated, destroyed, and deleted relevant documents and files after receiving notice of the investigation, and because they knowingly and willfully incinerated, destroyed, and deleted relevant documents and files after litigation commenced.

“Spoliation refers to the destruction or material alteration of evidence or to the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable litigation.” *Perez v. Hyundai Motor Company*, 440 F.Supp.2d 57, 61 (D. P. R. 2006) *citing Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001). “Litigants have the responsibility of ensuring that relevant evidence is protected from loss or destruction.” *Perez, supra*, 440 F. Supp.2d. at 61. “A litigant has a duty to preserve relevant evidence.” *Id. citing Perez-Velasco v. Suzuki Motor Co. Ltd.*, 266 F.Supp.2d 266 (D.P.R. 2003). “This obligation predates the filing of the complaint and arises once litigation is reasonably anticipated.” *Perez, supra*, 440 F. Supp.2d. at 61. “The duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation. *Perez-Velasco, supra*, 266 F.Supp.2d at 268 *citing Silvestri, supra*, 271 F.3d at 591.

“Applicable case law in the First Circuit has clearly established that ‘bad faith or comparable bad motive’ is not required for the court to exclude evidence in situations involving spoliation.” *Perez, supra*, 440 F. Supp.2d. at 61 *citing Trull v. Volkswagen of America, Inc.*, 187 F.3d 88, 95 (1st Cir. 1999). “Even absent bad faith, if evidence is destroyed through carelessness and the other side is prejudiced, a court is entitled to consider imposing sanctions.” *Stanton v.*

Northside Marina at Seaside Harbor, Inc., 2005 WL 2035586 citing *Sacramona v.*

Bridgestone/Firestone, Inc., 106 F.3d 444, 447 (1st Cir. 1997).

The *Stanton* court did not sanction a party who threw out a relevant lease agreement because “the absence of the lease [did] not prejudice [the other party]” where other documents established the relationship between the parties. *Stanton, supra*, 2005 WL 2035586 at *2.

However, in the *Sacramona* matter, evidence relating to a wheel involved in an accident was excluded because the plaintiff’s expert cleaned the interior surface of the wheel, thereby causing prejudice to the defendants in attempting to rebut plaintiff’s theory of tort claims. *Sacramona, supra*, 106 F.3d at 444.

In this matter, prejudice clearly results from the Defendants’ destruction, incineration and deletion of documents and files. The assay tickets, ledger cards, “tracking system”, and settlement reports are essential to Plaintiff’s claims, particularly with regard to damages. Although Plaintiff possesses a small portion of the documents, the vast majority of the relevant documents are, or were, in the possession of the Defendants, and have now been permanently deleted or destroyed.

The Defendants have admitted that they never made any effort to preserve evidence which they were aware may be necessary in litigation. In fact, the Defendants have admitted that they destroyed relevant evidence even after receiving Plaintiff’s Request for Production of Documents³. In February, 2003, the Defendants’ offices were raided by the Rhode Island State

³ MR. ACETO: What about the assay tickets, do you save the assay tickets?

WITNESS: Yes.

MR. ACETO: For how long do you save the assay tickets?

WITNESS: Six months.

MR. ACETO: Have you thrown any assay tickets away since this lawsuit started?

WITNESS: Yeah.

MR. ACETO: When did you last throw away assay tickets?

Police and several documents and computers were seized. From that point on, the Defendants were on notice that the relevant documents - including assay tickets, ledger cards, settlement reports and tracking system entries - should be preserved in anticipation of litigation. However, even if the Defendants claim ignorance of the likelihood of litigation at that point in time, they still willfully destroyed relevant documents as recently as a few months ago⁴.

WITNESS: A month or two ago.

MR. ACETO: Did you have any discussions with Miss Curren that these might be of some use in the litigation?

WITNESS: Miss Curren?

MR. ACETO: Yeah, your sister over there, sis you have discussion with her of how they may be of value in the litigation.

WITNESS: No.....

MR. ACETO: Did you tell any of the employees not to throw them away because of the pending litigation?

WITNESS: The assay tickets -- I incinerate them myself....

MR. ACETO: When was the last time you incinerated them?

WITNESS: About a month and a half ago.....

MR. ACETO: Any assay tickets left over from when Miss Bergevine worked there?

WITNESS: No.

MR. ACETO: When would those have been incinerated?

WITNESS: When she worked there.

MR. ACETO: Contemporaneously with when she worked there?

WITNESS: Yeah.

MR. ACETO: Or within six months, I guess you're saying; you say you throw them out six months later?

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⁴ MR. ACETO: What about the current tracking system, have you taken any steps since Miss Curren's deposition to get a copy of the tracking system pertaining to Miss Bergevine's clients.

WITNESS: Have I? No.

MR. ACETO: Do you know if anyone in the company has attempted to do that?

WITNESS: There's no documents.

MR. ACETO: There's no documents?

WITNESS: There's no documents.

MR. ACETO: There's no documents relating to Miss Bergevine's employment?

WITNESS: No.

MR. ACETO: Why is that?

WITNESS: Because we don't keep documents that we don't need for more than two or three years....

MR. ACETO: But you have a computer system, so why can't you access the documents in the computer system and print them? The tracking system is in a computer; correct?

WITNESS: The tracking system is in the computer.

MR. ACETO: Yeah, so has anyone in the company made an effort to print out those documents related to Miss Bergevine's customers?

WITNESS: No.

MR. ACETO: Do they exist?

WITNESS: No.

II. The Court should preclude the Defendants from offering any evidence to refute Plaintiff's claim of damages.

Destruction of relevant evidence - willful or not - warrants the imposition of sanctions "to avoid unfair prejudice to the opposing party". *Perez, supra*, 440 F. Supp.2d. at 61. "[T]he district court has inherent power to exclude evidence that has been improperly altered or damaged by a party where necessary to prevent the non-offending side from suffering unfair prejudice". *Id. citing Collazo-Santiago v. Toyota Motor Corp.*, 149 F.3d 23, 28 (1st Cir. 1998). "Sanctions for spoliation range from dismissal of the action, exclusion of evidence or testimony or instructing the jury on a negative inference to spoliation whereby jury may infer that party that destroyed evidence did so out of realization that it was unfavorable." *Perez, supra*, 440 F. Supp.2d. at 61 *citing Driggin v. Am. Sec. Alarm Co.*, 141 F.Supp.2d 113, 121 (D.Me.2000).

The Defendants in this matter destroyed all of the documents which would actually establish and quantify Plaintiff's damages. The documents were destroyed after the Defendants were on notice of potential litigation and have even been destroyed as recently as a few months ago. Based on the foregoing, the Court should preclude the Defendants from offering any evidence refuting the Plaintiff's claimed damages.

MR. ACETO: Why don't they exist?

WITNESS: Because I don't keep them around.

MR. ACETO: So are you testifying that somebody at the company deleted the tracking system relating to Miss Bergevine's customers?

WITNESS: I certainly hope so.

MR. ACETO: Why is that?

WITNESS: Because we got this computer system with 8000 customers in it, and maybe 3000 of them are real customers, and I am constantly trying to get people to get all the stuff out of the computer.....

CONCLUSION

By incinerating documents and deleting computer files, the Defendants destroyed any evidence as to the Plaintiff's actual damages, thereby unfairly prejudicing the Plaintiff from being able to present evidence as to same.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court sanction the Defendants by precluding them from offering any evidence refuting Plaintiff's claimed damages.

Respectfully submitted,
PATRICIA BERGEVINE,
By her attorneys,

/s/ Gregory J. Aceto
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Erin J. Brennan, Esq.
BBO No. 660097
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Boston, MA 02110
(617) 728-0888

Certificate of Service

I hereby certify that on October 4, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record in the matter via e-mail. I further certify that copies will be sent via U.S. Mail to all counsel in the matter who are not registered with the CM/ECF system.

/s/ Gregory J. Aceto
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Attorney for Plaintiff Patricia Bergevine

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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF MASSACHUSETTS
6 C.A.#: 05 11395 RCL
7
8 PATRICIA BERGEVINE,
9 Plaintiff
10 VS.
11 PEASE & CURREN, INC., PEASE & CURREN
12 MATERIALS, INC., FRANCIS H. CURREN, JR.,
13 ROBERT H. PEASE, JR., FRANCIS H. CURREN,
14 III, A/K/A KIP CURREN AND MEREDITH A.
15 CURREN,
16 Defendants
17
18 DEPOSITION OF FRANCIS H. CURREN,
19 III, a witness called by and on behalf
20 of the Plaintiff, pursuant to the
21 provisions of the Federal Rules of Civil
22 Procedure, before Joan Applegate,
23 Certified Shorthand Reporter and Notary
24 Public in and for the Commonwealth of
Massachusetts, at the offices of Johnson
& Aceto, 67 Battery March Street, Boston,
Massachusetts, on Tuesday, July 25, 2006
commencing at 10:00 a.m.

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18 from Robert H. Pease, Jr.,
19 dated 5/14/02
20 5 The letter to Tom Ganzenmuller 122
21 from Robert H. Pease, Jr.,
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23
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1 APPEARANCES:
2
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8 On behalf of the Plaintiff;
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14 On behalf of the Defendants;
15
16 Bruce W. Gladstone, Esq.
17 Cameron & Mittleman LLP
18 56 Exchange Terrace
19 Providence RI 02903
20 On behalf of the Defendants.
21
22 ALSO PRESENT:
23 Patricia Bergevine
24 Meredith A. Curren

1 E X H I B I T S
2 NO. DESCRIPTION PAGE
3 6 The Pease & Curren Inc. 122
4 Website information
5 7 The letter to Detective John 122
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15 Telephone log for Precious
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17 11 The document containing the 122
18 Pease & Curren Inc. Customer
19 settlement history for various
20 customers
21 12 The document entitled "Assay 122
22 Inquiry by Customer Name" for
23 Pease & Curren
24 (CONTINUED)

1	EXHIBITS	
2	NO.	DESCRIPTION PAGE
3	13	The document entitled 122
4		Defendants' Responses to
5		Plaintiff's Requests For The
6		Production of Documents"
7	14A	The document containing the 122
8		Pease & Curren Inc. Settlement
9		report for Jean Matrisciano,
10		Lot No. B0470, dated 2/14/02
11	14B	The document entitled "Assay 122
12		Inquiry by Customer Name" for
13		Jean Matrisciano
14	15A	The document containing the 122
15		Pease & Curren Inc. Settlement
16		report for Shaw Laboratories,
17		Lot No. B0410, dated 2/7/02
18	15B	The document entitled "Assay 122
19		Inquiry by Customer Name" for
20		Shaw Laboratories
21	16A	The document containing the 122
22		Pease & Curren Inc. Settlement
23		report for Darrell Overton,
24		Lot No. B1079, dated 4/24/02

1	EXHIBITS	
2	NO.	DESCRIPTION PAGE
3	16B	The document entitled "Assay 122
4		Inquiry by Customer Name" for
5		Darrell Overton
6	17A	The document containing the 122
7		Pease & Curren Inc. Settlement
8		report for Fort Wayne Dental Lab,
9		Lot No. S9232, dated 6/17/02
10	17B	The document entitled "Assay 122
11		Inquiry by Customer Name" for
12		Fort Wayne Dental Lab
13	18A	The document containing the 122
14		Pease & Curren Inc. Settlement
15		report for CDS Dental Studio,
16		Lot No. S9135, dated 5/16/02
17	18B	The document containing the 122
18		Pease & Curren Inc. Settlement
19		report for CDS Dental Studio,
20		Lot No. S8679, dated 2/4/02
21	18C	The document containing the 122
22		Pease & Curren Inc. Settlement
23		report for CDS Dental Studio,
24		Lot No. B0341, dated 2/4/02

1	EXHIBITS	
2	NO.	DESCRIPTION PAGE
3	18D	The document containing the 122
4		Pease & Curren Inc. Settlement
5		report for CDS Dental Studio,
6		Lot No. B1291, dated 5/16/02
7	18E	The document entitled "Assay 122
8		Inquiry by Customer Name" for
9		CDS Dental Studio
10	18F	Page 2 from the document 122
11		entitled "Assay Inquiry by
12		Customer Name" for CDS Dental
13		Studio
14	19	Deposition Notice 15
15	20	Pease & Curren 2004 Outside 125
16		Rep and Dental Rep Sales
17		Commission Plans
18	21	Printed document entitled 157
19		Dental Industry Refining
20		
21		
22		
23		
24		

1	STIPULATIONS	
2	It is hereby stipulated and	
3	agreed by and between counsel for the	
4	respective parties that the sealing,	
5	filing, and certification of the	
6	deposition are waived.	
7	It is further stipulated and	
8	agreed by counsel that all objections,	
9	except as to the form of the question,	
10	are reserved until the time of trial.	
11	Motions to strike likewise are reserved	
12	until the time of trial.	
13	The witness exercises his right	
14	to read the transcript and sign the	
15	original signature page under the pains	
16	and penalties of perjury. If the	
17	transcript is not signed within 30 days	
18	of receipt thereof, it is deemed	
19	accurate.	
20	FRANCIS H. CURREN, III, having	
21	duly affirmed that his testimony would	
22	be the truth, the whole truth, and	
23	nothing but the truth, testified as	
24	follows in answer to direct	

1 interrogatories:
 2 BY MR. ACETO:
 3 Q. Mr. Curren, can you state your full
 4 name, please?
 5 A. Francis Henry Curren, III.
 6 Q. Where do you currently reside, sir?
 7 A. Middletown, Rhode Island.
 8 Q. How long have you lived there?
 9 A. 25 years.
 10 Q. Who do you live there with, sir?
 11 A. My wife, two kids.
 12 Q. How old are your kids?
 13 A. My son is 21, daughter is 18.
 14 Q. Can you briefly describe for me, sir,
 15 your educational background?
 16 A. BA, Boston College '74; MFA, Columbia
 17 University, New York City, 1976; OPM,
 18 Harvard Business School, 1990.
 19 Q. I'm sorry, what was that last one you
 20 got from Harvard?
 21 A. OPM.
 22 Q. What's an OPM?
 23 A. Executive education program for company
 24 owners.

1 A. No.
 2 Q. Any kinds of training or programs that
 3 facilitated your ability to understand
 4 the processes that you engage in at
 5 Pease & Curren?
 6 A. No.
 7 Q. What is your title today at Pease &
 8 Curren, sir?
 9 A. Vice-president.
 10 Q. Vice-president, is that what you just
 11 said?
 12 A. Vice-president.
 13 Q. And how long have you been
 14 vice-president?
 15 A. 20 years.
 16 Q. And before that, what was your title?
 17 A. Operations manager.
 18 Q. What are your responsibilities as
 19 vice-president, sir?
 20 A. I oversee the sales force.
 21 Q. Anything else?
 22 A. I sell the lower grade material to the
 23 outside refiners.
 24 Q. What other responsibilities do you have

1 Q. What year did you attend that program?
 2 A. 1990. Three-year program.
 3 Q. Full-time or part-time basis?
 4 A. It's full-time for six weeks. You live
 5 in the dorms. You do it for three
 6 years.
 7 Q. Any other educational background that
 8 you haven't described for us already?
 9 A. Yeah, I went to Saint Paul's.
 10 Q. Saint Paul's High School?
 11 A. No, grade school.
 12 Q. Well, I'm talking about college and
 13 forward. Anything after college, post
 14 college?
 15 A. Columbia University.
 16 Q. What did degree did you obtain at
 17 Columbia University?
 18 A. Like I said, an MFA.
 19 Q. Any other educational training or
 20 programs you've taken, Mr. Curren,
 21 related to the job that you're involved
 22 in today?
 23 A. No.
 24 Q. Any metallurgy classes?

1 at Pease & Curren, sir?
 2 A. Well, I own the place, so I'm interested
 3 in the operations.
 4 Q. Anything else?
 5 A. That's it.
 6 Q. You say you own the place. What
 7 percentage do you own of the business?
 8 A. 50 percent.
 9 Q. Who owns the other 50 percent?
 10 A. My sister.
 11 Q. Your sister that is here today?
 12 (Witness nodding his head
 13 affirmatively.)
 14 Q. You have to answer orally.
 15 A. My sister.
 16 Q. Your sister that's here today, sir?
 17 A. My sister that is here today, yes.
 18 Q. You said you sell lower grade materials
 19 to outside refiners. What does that
 20 mean, sir?
 21 A. That means material that does not fit
 22 through our refining process I sell.
 23 Q. Sell to whom?
 24 A. Various smelters and refiners.

1 Q. Such as?
 2 A. Rand Refinery in South Africa; Umicore,
 3 Hoboken and Belgium; Johnson Matthey,
 4 London, Johnson Matthey, West Depford,
 5 New Jersey; Heraeus, Germany; Heraeus,
 6 New Jersey; Mercury Refining, New
 7 Jersey; Sipi Metals, Chicago; Sabin
 8 Metals, Rochester, New York.
 9 Q. Any other refineries that you sell to?
 10 A. Yeah.
 11 Q. How many more?
 12 A. Five or six.
 13 Q. Any that you recall off the top of your
 14 head?
 15 A. Those are the -- I have stated the main
 16 people that we do business with.
 17 Q. When you say "low grade materials,"
 18 Mr. Curren, are you referring also to
 19 the dental materials that you recovered?
 20 A. All dental.
 21 Q. What other materials besides dental
 22 materials are considered low grade by
 23 you?
 24 A. If it's silver below 80 percent.

1 A. Sludge, zinc traps for jewelers,
 2 ceramic.
 3 MR. ACETO: Let's go off the
 4 record for a second.
 5 (Whereupon there is a brief
 6 discussion off the record.)
 7 MR. ACETO: Can we mark this 19?
 8 (Exhibit 19, Deposition Notice,
 9 so marked.)
 10 Q. Mr. Curren, I'm going to show you what
 11 has been marked as Exhibit No. 19 to
 12 your deposition, sir.
 13 MR. ACETO: As I just said when
 14 we were off the record, the deposition
 15 exhibits that were marked at your
 16 sister's deposition are going to remain
 17 the same number for ease of reference,
 18 so we are going to start and mark this
 19 as Exhibit 19.
 20 Q. Can you take a moment and look at what
 21 has been marked as Exhibit 19, sir?
 22 (Witness looking over document.)
 23 Q. Have you had sufficient time to review
 24 Exhibit 19, Mr. Curren?

1 Q. I think what I'm asking you, Mr. Curren,
 2 any other field such as the dental
 3 field, any other field that are low
 4 grade materials that are shipped to
 5 outside refiners?
 6 A. Yes.
 7 Q. What are those other fields?
 8 A. Material that is contaminated with
 9 platinum or palladium.
 10 Q. Anything else?
 11 A. Material with characteristics that make
 12 it below 30 percent gold. Incinerated
 13 material, refractory material, crushable
 14 material, material contaminated with
 15 iron, steel, molybdenum.
 16 Q. Any other materials that you recover at
 17 Pease & Curren that you consider to be
 18 low grade materials that are refined by
 19 an outside refinery?
 20 A. I didn't get that one.
 21 MR. ARONSON: I think he asked
 22 you if there were any other materials.
 23 A. Yeah, there's others.
 24 Q. Anything else of significance?

1 A. Correct.
 2 Q. Have you seen it prior to today?
 3 A. No.
 4 Q. You have never seen this Notice of
 5 Deposition prior to today?
 6 A. No.
 7 Q. Did you bring any of the documents that
 8 are referenced in the Schedule A?
 9 MR. ARONSON: I can jump in here
 10 and say we have produced in our document
 11 production documents responsive to this
 12 request.
 13 MR. ACETO: Okay. As part of
 14 the documents request?
 15 MR. ARONSON: Yes.
 16 MR. ACETO: And he has no other
 17 documents in his personal possession?
 18 MR. ARONSON: To my knowledge,
 19 all the documents that were requested
 20 and not objected to were produced.
 21 MR. ACETO: Including the ones
 22 listed in the Schedule A?
 23 MR. ARONSON: That's my
 24 understanding.

1 Q. Mr. Curren, who's senior to you at
2 Pease & Curren?
3 A. Nobody.
4 Q. You said you're vice-president. Who's
5 president of the company?
6 A. Meredith.
7 Q. Is she considered a senior officer to
8 you?
9 A. No.
10 Q. You're both equal?
11 A. Equal.
12 Q. And when you make decisions, the two of
13 you make them together jointly?
14 A. Sometimes.
15 Q. Anybody else involved in the decision-
16 making at Pease & Curren?
17 A. Yeah, a lot of people.
18 Q. Who are they?
19 A. The managers, the workers, salesmen,
20 inside salespeople, administrative
21 assistants, maintenance guys, lab
22 people, lab manager.
23 Q. When you make decisions about the
24 company, you involve all these people

1 more specific with your question.
2 THE WITNESS: That's what I'm
3 getting to.
4 MR. ARONSON: Go ahead and
5 answer it, if you can.
6 THE WITNESS: What was the
7 question?
8 (Whereupon the previous question
9 was read back.)
10 A. John Michener.
11 Q. Who's John Michener?
12 THE WITNESS: Should I answer
13 the first question or should I answer
14 this question?
15 MR. ARONSON: Answer this
16 question. Have you finished your
17 answer?
18 THE WITNESS: No.
19 MR. ACETO: I thought you were
20 done.
21 Q. Who else meets with you, Mr. Curren?
22 A. Other people.
23 MR. ARONSON: If you can
24 identify all of them, certainly --

18

1 that you just testified about,
2 Mr. Curren?
3 A. Absolutely.
4 Q. Do you have a company-wide meeting every
5 time there's a decision to be made?
6 A. No.
7 MR. ARONSON: Objection.
8 Q. I think you understand the question,
9 sir. The highest levels of the company,
10 who makes the decisions at Pease &
11 Curren?
12 A. At the highest levels?
13 Q. Of Pease & Curren, yes.
14 A. Myself and my sister.
15 Q. Anybody else meet with you when the
16 two of you meet to make decisions about
17 running the company?
18 A. Yes.
19 Q. Who's that?
20 MR. ARONSON: I'm going to
21 object. That's a very broad question.
22 You can answer it, but there are a lot
23 of decisions that might require others
24 and some that may not. If you can be

20

1 THE WITNESS: Should I identify
2 all the people?
3 MR. ARONSON: Yes, that is what
4 he asked you.
5 A. Stephen Doyle.
6 Q. Okay. What was the first guy, James
7 Michener?
8 A. No, that's a famous author. John
9 Michener.
10 Q. John Michener. Who else?
11 A. Stephen Doyle.
12 Q. Anybody else?
13 A. John Lees.
14 Q. Who else, sir?
15 A. Karen DelPonti.
16 Q. Anybody else?
17 A. I would say under most circumstances
18 those people would cover the list of
19 people that we would have at high level
20 meetings, such as you asked.
21 Q. And John Michener, what is his title at
22 the company?
23 A. Consultant.
24 Q. Is he an employee of the company?

1 A. No.
 2 Q. What is his background in?
 3 A. Business and law.
 4 Q. He's an attorney?
 5 A. He is.
 6 Q. What is the name of his law firm?
 7 A. John Michener.
 8 Q. And Stephen Doyle, what is his title,
 9 sir?
 10 A. Consultant.
 11 Q. What is his background in?
 12 A. Sales management and general management.
 13 Q. And he's not an employee, either; is
 14 that correct?
 15 A. He's a consultant.
 16 Q. He's not an employee?
 17 A. He's not an employee of Pease & Curren.
 18 Q. John Lees, sir, what is his relationship
 19 to the company?
 20 A. He's a consultant.
 21 Q. What is the name of his company?
 22 A. I can't remember the name of his
 23 company.
 24 Q. What about Stephen Doyle, what is the

1 Mr. Curren, can you describe for me
 2 your employment background?
 3 A. Yeah, I worked at Simon & Schuster in
 4 New York City.
 5 Q. What were the years of that employment?
 6 A. 1977 to 1979.
 7 Q. And what did you do there?
 8 A. I worked for paperback pocket books at
 9 Viacom. I purchased book rights for
 10 movies.
 11 Q. This is when you got right out of
 12 college?
 13 A. Graduate school.
 14 Q. What did you do after 1979?
 15 A. Went to work at Pease & Curren.
 16 Q. What was your title when you started at
 17 Pease & Curren?
 18 A. Worker.
 19 Q. Who were the owners of the company when
 20 you started in 1979?
 21 A. My father; Mr. Pease.
 22 Q. What was Mr. Pease's full name, sir?
 23 A. Robert Pease.
 24 Q. Is that the same Robert Pease that you

1 name of his company?
 2 A. Stephen Doyle.
 3 Q. Where is he located?
 4 A. Martha's Vineyard.
 5 Q. Where is John Michener located?
 6 A. Fort Worth, Texas.
 7 Q. And John Lees, where is he located, sir?
 8 A. Boston, Massachusetts.
 9 Q. What's the area that Mr. Lees consults
 10 with Pease & Curren in?
 11 A. General management and sales management.
 12 Q. And Karen DelPonti?
 13 A. Providence, Rhode Island.
 14 Q. And she's a consultant, as well?
 15 A. She is.
 16 Q. What's the name of her company?
 17 A. Cameron & Mittleman.
 18 Q. What's the area that she consults with
 19 you in?
 20 A. Financial planning.
 21 Q. Financial planning for the company or
 22 for you individually?
 23 A. Both.
 24 Q. Prior to working at Pease & Curren,

1 were partners with in the last few
 2 years, or is that his son?
 3 A. That is his father.
 4 Q. Right. So the partner that you recently
 5 had was the son of Robert Pease that you
 6 just identified; is that right?
 7 A. Correct.
 8 Q. When did your father sell his interest
 9 in the company?
 10 A. In the '90s.
 11 Q. What about Mr. Pease, when did he sell
 12 his interest?
 13 A. Same time.
 14 Q. At the same exact time both them sold
 15 their interest?
 16 A. Yeah.
 17 Q. The two of them sold their interest to
 18 the three of you, you, Miss Curren, and
 19 Mr. Pease?
 20 A. Yes.
 21 Q. What interest at the time of the sale
 22 did each of the three of you have in the
 23 company, what percentage interest?
 24 A. Zero.

1 Q. Why was that?
2 A. Because my father and Mr. Pease owned
3 the company.
4 Q. Well, immediately after the sale to you,
5 what percentage interest did each of you
6 own in the company?
7 A. Jay Pease owned 50 percent, Meredith
8 Curren owned 25 percent, and I owned
9 25 percent.
10 Q. How many employees did the company have
11 when you purchased the company back in
12 the '90s?
13 A. Approximately 35.
14 Q. How many employees does it have today?
15 A. Approximately 35.
16 Q. What were the sales -- excuse me, strike
17 that. What was the gross revenues for
18 the company back in the 1990s?
19 A. It varied.
20 Q. Can you give me an estimate?
21 MR. ARONSON: What year are we
22 talking about?
23 Q. At the time that you bought the company,
24 sir.

1 specific salary amounts and things of
2 that nature, but he can describe the
3 structure of his compensation, but I'm
4 not going to let him disclose
5 information concerning the details of
6 his own salary.
7 MR. ACETO: And the reason for
8 what is why?
9 MR. ARONSON: That is
10 confidential information. That has no
11 relevance to this case, and I believe
12 you're doing this the same way you asked
13 Miss Curren about that information, in
14 order to harass the witnesses.
15 MR. ACETO: Okay. And I don't
16 agree with that, and I am going to file
17 a motion to compel those answers.
18 You're still instructing him not
19 to answer?
20 MR. ARONSON: You heard my
21 instruction, didn't you, sir?
22 MR. ACETO: There's no need to
23 get flip, Mr. Aronson, I'm just making
24 sure that you're still instructing him

1 A. No. I don't know.
2 Q. You have no idea what the revenue
3 figures were back at the time you bought
4 the company?
5 THE WITNESS: Should I guess?
6 MR. ARONSON: I don't want you
7 to guess.
8 A. I can't guess.
9 MR. ARONSON: Don't speculate,
10 don't guess.
11 Q. What are the gross revenue figures
12 today, sir?
13 A. For last year?
14 Q. Yeah.
15 A. \$35 million.
16 Q. Has that figure gone up or down since
17 2000?
18 A. Up.
19 Q. Can you describe for me, sir, your
20 compensation package at Pease & Curren
21 for 2005?
22 MR. ARONSON: I am going to
23 object and instruct him not to answer to
24 the extent that you're asking for

1 not to answer the question.
2 MR. ARONSON: You do have a flip
3 approach yourself, Mr. Aceto, and you
4 repeated yourself three times. I gave
5 you my objection. I told you why I was
6 objecting, which you're not even
7 entitled to that, so you heard that, and
8 you haven't persuaded me differently, so
9 he will not answer the question, and you
10 can do what you would like after.
11 MR. ACETO: Mr. Aronson, you're
12 incorrect. I have a right to know why
13 you're instructing him not to answer. I
14 don't need to know why you're objecting.
15 When you go one step further and told
16 him not to answer on a completely
17 baseless faction, I have a right to
18 inquire about it.
19 I am confirming you're telling
20 him not to answer that question or what
21 his salary is?
22 MR. ARONSON: You heard my
23 instruction, sir. I don't want to waste
24 time with your speeches on the record

1 that I'm going to have to pay for later.
 2 Let's move on with the deposition.
 3 We're going to be here a long time, and
 4 so let's try to do it expeditiously,
 5 please.
 6 Q. Mr. Curren, state your full compensation
 7 package, please.
 8 MR. ARONSON: With my
 9 instruction, you may answer.
 10 A. No.
 11 Q. No what?
 12 A. No, I'm not answering the question.
 13 Q. You're not going to answer any of the
 14 question?
 15 A. No.
 16 Q. You're not even going to describe what
 17 your compensation package is?
 18 MR. ARONSON: You can describe
 19 the structure of what it is, if it's
 20 based on -- the breakup of the
 21 compensation package. I don't want you
 22 to give figures, but give him an idea of
 23 how you get compensated.
 24 A. Sure. I get a weekly check. Then at

1 A. Yes.
 2 Q. And you have hired him as an attorney
 3 for the company?
 4 A. I have.
 5 Q. Do you have a fee agreement with him?
 6 A. I do.
 7 Q. Will you be willing to produce a copy of
 8 that for me?
 9 MR. ARONSON: He's not going to
 10 make decisions what they produce. If
 11 you want to make a request, we will deal
 12 with it appropriately.
 13 Q. And there's an executed fee agreement
 14 between you and Mr. Michener; is that
 15 right, between your company and
 16 Mr. Michener?
 17 A. No, that's not right.
 18 Q. There is no written fee agreement
 19 between the two of you?
 20 A. No.
 21 Q. How did you meet Mr. Michener?
 22 A. I went to Harvard with him.
 23 Q. And what program did you attend at
 24 Harvard with him?

1 the end of the year, I talk to John
 2 Michener, and he basically goes over the
 3 tax implications of what the balance
 4 sheet looks like and the company looks
 5 like, and he says, "I think it would be
 6 a good idea for you guys to do the
 7 following," and we take his advice, and
 8 it could include putting money into the
 9 company.
 10 Q. And what other advice does he give you
 11 in regards to -- I assume you're talking
 12 about money that is left over at the end
 13 of the year, how to distribute it.
 14 MR. ARONSON: Let me object
 15 here. If these are communications that
 16 you're receiving from Mr. Michener as an
 17 attorney regarding legal issues, I'm
 18 going to instruct you not to answer
 19 that.
 20 THE WITNESS: Okay.
 21 Q. And Mr. Curren, is it your understanding
 22 that he is acting as an attorney when
 23 he's advising you how to distribute
 24 money?

1 A. OPM.
 2 Q. How do you pay him for his services?
 3 A. Check.
 4 Q. Does he bill you on an hourly basis?
 5 MR. ARONSON: You may answer.
 6 A. Daily.
 7 Q. On a daily basis. So he bills you a
 8 flat rate per day?
 9 A. Correct.
 10 Q. And does it entail your meeting with him
 11 here or in Texas?
 12 A. Yes.
 13 Q. Does he come here or do you go there?
 14 A. Back and forth.
 15 Q. What else is involved in your
 16 compensation package besides this,
 17 Mr. Curren?
 18 A. Nothing.
 19 Q. You don't have your health insurance
 20 paid for by the company?
 21 A. I do.
 22 Q. You don't have a car provided for you by
 23 the company?
 24 A. I do.

1 Q. You don't have -- what other benefits,
 2 Mr. Curren, do you get paid for by the
 3 company?
 4 A. A car, health insurance.
 5 Q. Anything else?
 6 A. I don't think so.
 7 Q. Are you familiar with a company called
 8 Pease & Curren Materials, Inc.?
 9 A. I am.
 10 Q. Is that company still in existence
 11 today, sir?
 12 A. No.
 13 Q. Were you an employee of the company?
 14 A. No.
 15 Q. Can you describe for me what the purpose
 16 of that company was?
 17 A. It commonly would be called a materials
 18 company, which would also commonly be
 19 called a holding company.
 20 Q. And it was a holding company for whom,
 21 sir?
 22 A. Metals.
 23 Q. And who were the owners of the company?
 24 A. Robert Pease and my father.

1 A. I don't get "individually."
 2 Q. The two of them owned it individually,
 3 not Pease & Curren, sir?
 4 A. They were the individual owners of Pease
 5 & Curren, who owned the metal. I think
 6 that's what -- is that where you're
 7 going?
 8 Q. The company owned the materials, the
 9 metals; is that your testimony? Pease &
 10 Curren, Inc. owned the metals?
 11 MR. ARONSON: Objection. I
 12 think you're confusing what he's
 13 answered, but go ahead and answer again.
 14 He's asking you whether Pease & Curren
 15 owned the metals.
 16 MR. ACETO: Mr. Aronson, just
 17 state your objection, that's it. Your
 18 editorializing isn't helping any.
 19 MR. ARONSON: I would like him
 20 to answer the question so he understands
 21 it. I don't want you taking advantage
 22 of the witness, Mr. Aceto. You asked
 23 the question and you twisted the words.
 24 MR. ACETO: I think the record

1 Q. When was the company created?
 2 A. In the '90s.
 3 Q. After your purchase of Pease & Curren?
 4 A. Correct.
 5 Q. Why is the company no longer in
 6 existence today?
 7 A. It's not necessary.
 8 Q. Why isn't it necessary?
 9 A. It has no assets.
 10 Q. Describe for me how this company -- why
 11 this company came into existence after
 12 you purchased Pease & Curren.
 13 A. It was a vehicle to hold metals.
 14 Q. To hold what metals, sir?
 15 A. Gold, silver, platinum, palladium and
 16 copper.
 17 Q. And who owned those metals before
 18 Pease & Curren Materials, Inc. was
 19 created?
 20 A. Robert Pease and my father.
 21 Q. Owned it individually?
 22 A. They were the owners.
 23 Q. Individually?
 24 MR. ARONSON: Objection.

1 will show what he just said.
 2 MR. ARONSON: The record will
 3 show it. I want to make sure he
 4 understands the question and has an
 5 opportunity to answer it. I would like
 6 you to let him answer it and give a
 7 full answer. You're cutting him off,
 8 you're trying to mislead him, and I
 9 don't think that's right, Mr. Aceto.
 10 MR. ACETO: Mr. Aronson, I am
 11 not cutting him off, and at any point
 12 have I cut off his testimony, and at no
 13 point am I misconstruing his words.
 14 He just said Mr. Pease and your
 15 father owned the company, and the
 16 company owned the metals; is that
 17 correct?
 18 THE WITNESS: Correct.
 19 MR. ACETO: Thank you. Is there
 20 anything else you would like to say,
 21 Mr. Aronson?
 22 MR. ARONSON: I would like you
 23 to try to be fair with your questions,
 24 sir, not mislead the witness, and not

1 cut him off.
 2 MR. ACETO: Thank you. Anything
 3 else you need to say, Mr. Aronson?
 4 MR. ARONSON: That's all I have
 5 to say. Why don't you ask your next
 6 question.
 7 MR. ACETO: Thank you,
 8 Mr. Aronson.
 9 Q. So how were the metals transferred from
 10 Pease & Curren, Inc., the ownership,
 11 from Pease & Curren, Inc. to Pease &
 12 Curren Materials, sir?
 13 A. Paperwork.
 14 Q. Was there any transfer of money?
 15 A. No.
 16 Q. So when Pease & Curren, Inc. -- how did
 17 Pease & Curren, Inc. pay for the metals
 18 that were owned by Pease & Curren
 19 Materials, Inc. once they were
 20 transferred to Materials?
 21 A. They didn't.
 22 Q. So what happened to the metals that were
 23 owned by Materials -- I will call Pease
 24 & Curren Materials, Materials, what

1 Q. Sure. Why don't you try and explain it
 2 to me, Mr. Curren.
 3 A. Okay. Materials come to Pease & Curren.
 4 We cannot process the materials, we have
 5 to ship them to somebody else. We are
 6 not a refiner of a large part of the
 7 materials that come into Pease & Curren;
 8 however, we have to pay our customers
 9 before the material is refined, so one
 10 way to do that would be to go to a bank,
 11 get a loan, pay interest. If you set up
 12 a materials company, materials company
 13 you can lease instead of a loan at a
 14 lower rate. That's the motivation for
 15 it. The reality of the situation is the
 16 amounts of metals ebb and flow, so
 17 sometimes you may need this material,
 18 sometimes you may not need this
 19 material. It has to be accounted for.
 20 It has to be kept someplace. In this
 21 case, Pease & Curren Materials was an
 22 ideal vehicle to keep this metal when we
 23 didn't need it and to lease it from when
 24 we did need it.

1 happened to them?
 2 A. They remained at Pease & Curren
 3 Materials, and if and when we needed
 4 that metal, we -- meaning the new
 5 ownership of Pease & Curren, which was
 6 at this point myself, my sister who is
 7 sitting here, and Mr. Pease -- would be
 8 in a situation that we could borrow the
 9 metal to use the metal for our process,
 10 and we had to pay a lease fee to Pease &
 11 Curren Materials for this privilege.
 12 Q. Of using their materials?
 13 A. Yeah.
 14 Q. And for what purpose did you use Pease &
 15 Curren Materials metals?
 16 A. To process material that was moving
 17 through the Pease & Curren plant.
 18 Q. Why would you need those metals to
 19 process? I don't understand what you're
 20 saying, Mr. Curren.
 21 A. It's a difficult concept. If you're
 22 interested in hearing about it and
 23 learning about it, I can explain it to
 24 you in as much detail as you would like.

1 Q. What would be the circumstances why you
 2 would need metals?
 3 A. It's a volume-related situation.
 4 Q. Meaning what, sir?
 5 A. A company ships in a couple thousand
 6 ounces of gold. We have to pay before
 7 we get paid, pay the company, lease the
 8 gold so we can etch the gold, so we can
 9 match our buys and sells.
 10 Q. So when you sell -- so that after you
 11 have leased material -- metals from
 12 Materials -- let's call the company
 13 Pease & Curren Materials, can we agree
 14 to call them PCM, just to make it clear?
 15 A. Whatever you want.
 16 Q. When you lease the metals from PCM, you
 17 pay money back to PCM to lease that
 18 material; correct?
 19 A. That's correct, yes.
 20 Q. Then you take those metals and you
 21 package them together to send to a
 22 refiner; is that correct?
 23 A. No, no.
 24 Q. You don't?

1 A. No, no, no, no, no, no, no.
 2 Q. But at some point PCM has been depleted
 3 of all metals that were owned by it at
 4 one point; is that right?
 5 A. I'm not sure that ever happened, but it
 6 could have happened. It could be
 7 totally depleted, yeah. That's
 8 possible.
 9 Q. In fact, isn't that why the company was
 10 dissolved?
 11 A. It was dissolved because it was no
 12 longer necessary as a vehicle. But no,
 13 that's not why it was dissolved.
 14 Q. You said that earlier. Why wasn't it
 15 necessary as a vehicle anymore to
 16 Pease & Curren?
 17 A. Because we purchased the metals.
 18 Q. Over time you had purchased all the
 19 metals from PCM?
 20 A. We purchased -- now I can't tell you
 21 whether we purchased Pease & Curren
 22 Materials and dissolved it or whether we
 23 purchased the metals and then dissolved
 24 it; I cannot remember that distinction.

1 Q. Okay.
 2 A. It's a transfer, recorded transfer that
 3 happened that I can investigate for you,
 4 but I can't remember right now how
 5 exactly we did it.
 6 Q. Okay. When did you first get into the
 7 dental industry, sir?
 8 A. 1996.
 9 Q. And were you involved in the
 10 dental industry refining prior to
 11 Miss Bergevine joining?
 12 A. Not on a strategic basis.
 13 Q. What do you mean by that, "not on a
 14 strategic basis"?
 15 A. We had some dental customers who would
 16 ship in periodically.
 17 Q. But you weren't marketing the dental
 18 industry?
 19 A. That is what I said, not on a strategic
 20 basis.
 21 Q. Whose decision was it to hire
 22 Miss Bergevine at the company?
 23 A. Beth -- excuse me, Meredith, myself.
 24 Q. And how did you first learn of

1 Miss Bergevine?
 2 A. Meredith.
 3 Q. And do you recall who approached
 4 Miss Bergevine about a job offer?
 5 A. No.
 6 Q. Do you recall whether she came to you
 7 first?
 8 A. No, we came to her.
 9 Q. Where was she working at the time that
 10 you approached her?
 11 A. I think nowhere.
 12 Q. She was unemployed?
 13 A. That's what I think.
 14 Q. Do you recall what her compensation
 15 package was when you hired her?
 16 A. No.
 17 Q. Do you recall whether at some point her
 18 compensation became based on the amounts
 19 of metals recovered by her customers?
 20 MR. ARONSON: Objection. Go
 21 ahead.
 22 A. Trish wanted to work at home. She had a
 23 baby named Victoria. She was a mother.
 24 And Trish had dental experience, so

1 therefore she was valuable to us because
 2 we wanted to go into this industry. It
 3 was a good fit. We came up with a sort
 4 of weekly pay or an hourly pay, I don't
 5 remember, and then we came up with a
 6 commission plan based on the number of
 7 jobs that she produced. She was adamant
 8 that she wanted to be an independent
 9 contractor and not tie herself up solely
 10 with Pease & Curren because she was
 11 interested in some other companies
 12 besides Pease & Curren and working as a
 13 dental distributor selling dental
 14 products to dental labs, so she
 15 presented herself as someone who would
 16 be selling various dental products to
 17 dental labs, and along with that a
 18 refining line, so we would be another
 19 line of work for her along with her
 20 product lines. And she had represented
 21 to me that she had made arrangements
 22 with two distributors to solicit
 23 business from dental laboratories, and
 24 that the refining line would be a good

1 line to have in addition to the -- I
 2 don't know -- product lines that she
 3 wanted to have.
 4 Q. What were the product lines that she
 5 wanted to have, sir?
 6 A. I'm not -- I don't remember exactly, but
 7 the types of things that you would use
 8 in a dental lab. Some consumables, some
 9 hardware. In other words, they have
 10 catalogs, and some items they use every
 11 week kind of come out of the items, and
 12 then some specialty items. A lot of
 13 items if you were setting up a new
 14 dental lab, for instance.
 15 Q. I don't mean to cut you off. This is
 16 really not relevant to what we're
 17 talking about, so let me just ask you,
 18 when did she present this to you?
 19 MR. ARONSON: Did you finish
 20 your answer?
 21 THE WITNESS: No, I didn't
 22 finish my answer.
 23 Q. What else did you want to say,
 24 Mr. Curren?

1 for a while at selling other product
 2 lines?
 3 A. Yes.
 4 Q. And you understood that she was going to
 5 work out of her house?
 6 A. Yes.
 7 Q. And you agreed to hire her as an
 8 independent contractor?
 9 A. We did.
 10 Q. Throughout the full time of her
 11 employment?
 12 A. Up until the last six months.
 13 Q. And why did that change in the last six
 14 months?
 15 A. Trish had a real desire for money, more
 16 money, and she wanted to move up like
 17 the jewelry salespeople and make more
 18 money. Also, her independent
 19 contracting stuff turned out to be
 20 somewhat mythical, had never developed
 21 -- her other dental pursuits with these
 22 other companies did not develop.
 23 Q. How do you know that?
 24 A. Because I spoke to her about it. So

1 A. She -- her goal in the beginning was to
 2 have the freedom to be with Victoria and
 3 also the freedom not to be a full-time
 4 employee at Pease & Curren and represent
 5 these other people and some sort of
 6 autonomy, and also her goal was to work
 7 out of her house a lot using the
 8 telephone, and because she had
 9 experience, we accommodated this,
 10 although we don't usually accommodate
 11 people working out of their houses or
 12 people just coming to the office one day
 13 a week or half a day because in my
 14 experience they don't learn some of the
 15 things they need to learn. They don't
 16 gain the experience. However, because
 17 she was strong in the dental industry
 18 and she had represented that she had had
 19 existing customers, I thought, "Let's
 20 give it a try and see how it goes."
 21 Q. So she told you all this that she wanted
 22 to do prior to you hiring her?
 23 A. Yes.
 24 Q. And you understood that she was working

1 because they didn't develop the way she
 2 had hoped they'd develop, she became
 3 drawn more and more into the refining,
 4 into Pease & Curren, so her efforts were
 5 more and more dedicated to our company.
 6 At a certain point you say you're an
 7 outside contractor, but you're not
 8 really an outside contractor. You're
 9 not working for any other dental labs.
 10 You have been here for several years.
 11 We're the only ones paying you. The
 12 Board of Labor is going to come walking
 13 in the door and we're going to say, "Oh,
 14 here's the outside contractor, Trish,"
 15 and then they're going to say, "She's
 16 not an outside contractor. She's
 17 working for you exclusively. She's an
 18 employee." This was very difficult to
 19 explain to Trish, but I explained it to
 20 her.
 21 So, also we got -- I stopped
 22 being the sales manager. We hired a new
 23 sales manager. So she wanted to make
 24 more money. She wanted to play with the

1 big boys, so we changed and made her a
 2 full-time employee and put her on a new
 3 compensation system which the jewelry
 4 salesmen were on. And we said, "Trish,
 5 you have a great upside of potential.
 6 Rather than sitting around getting 50 or
 7 75 bucks a job, we will put you on just
 8 like the salespeople; however, we don't
 9 want these transactional customers.
 10 We are going after long-term, repeat,
 11 large customers, so therefore instead of
 12 a five-ounce threshold for commission,
 13 we are going to put the threshold up" --
 14 for jewelry salespeople it was 250
 15 ounces; that we deemed to be
 16 unreasonable for Trish, so we put it at
 17 25 ounces.

18 So now Trish had to deal with
 19 repeat customers, larger customers,
 20 service customers, and not spend her
 21 time with transactional customers.
 22 This, I felt, would be very good for
 23 Trish, increase her income. It would be
 24 better for the sales manager, make her a

1 Q. It started in 2001?
 2 A. Yeah. It took about a year.
 3 Q. What happened from January 1, 2000 to
 4 2001 when it started, what was going on?
 5 A. What was going on is Trish was learning
 6 how to handle repeat customers, larger
 7 customers. She was getting training.
 8 Q. Anything else?
 9 A. Yeah. She was becoming more integrated
 10 into the sales force and more integrated
 11 into the company.
 12 Q. What about Bethany Warburton, was she
 13 transferred to an employee status as
 14 well?
 15 A. No.
 16 Q. She stayed as an independent contractor?
 17 A. No.
 18 Q. It had to be one or the other; didn't
 19 it?
 20 A. No.
 21 Q. What was her status with the company?
 22 A. Employee.
 23 Q. She was always an employee?
 24 A. From the day she started.

1 better part of the team, make her less
 2 isolated. She was very isolated working
 3 out of her home.
 4 Q. When did this transfer occur?
 5 A. I believe January 1, 2000.
 6 Q. All this happened at the same time she
 7 became an employee as opposed to a
 8 contractor, and she became integrated in
 9 the rest of the sales force; is that
 10 right?
 11 A. "All this" meaning what?
 12 Q. All this happened at the same time?
 13 A. No, no, no, no. It took about a year.
 14 You can't just take somebody and chuck
 15 them into this. You have to prepare
 16 somebody for change, for the step up the
 17 ladder, for the -- you were aiming at
 18 success. Success -- you don't just
 19 declare success, you have to make
 20 success and prepare for success and
 21 train for success.
 22 Q. So when did this process start,
 23 Mr. Curren?
 24 A. I would say 2001.

1 Q. Okay. Did she also go through this
 2 process to be merged into the sales
 3 force?
 4 A. Yes.
 5 Q. She did that when, at the beginning of
 6 her employment or at the same time that
 7 Trish was going through it?
 8 A. The same time.
 9 Q. In your opinion, how did that process go
 10 of merging them into the sales -- the
 11 two of them into the sales force?
 12 A. It's kind of like taking a hurricane --
 13 that would be Trish -- and then just
 14 putting the hurricane on top of a
 15 30-foot sailboat in the middle of the
 16 Gulf Stream. Trish was totally
 17 resistant to teamwork and having another
 18 employee -- totally resistant to
 19 splitting her territory up. She thought
 20 that we were taking something away from
 21 her. I had to explain to her, "Can't
 22 cover the whole world. This is a good
 23 thing. Less territory, less
 24 transactional customers, more big

1 customers, more profitable customers.
 2 Partner. You're not here, your partner
 3 helps you out. You trust your partner.
 4 You're a team, dental team. You go to
 5 shows together. You work together. You
 6 bounce ideas off each other. Two and
 7 two makes three."
 8 She resisted it, kicking and screaming.
 9 Q. Who was her partner in this process?
 10 A. Bethany Warburton.
 11 Q. What do you mean "two plus two makes
 12 three"?
 13 A. Well, one plus one makes three. I don't
 14 know how it works. It's asymmetry. If
 15 you have teamwork, you get more out of a
 16 team than you do out of individual
 17 players. That's a sales dynamic.
 18 Q. I know what you're saying now, sir.
 19 So what did do you mean by "a
 20 transactional customer"? You mean a
 21 one-time customer?
 22 A. A customer with no loyalty to Pease &
 23 Curren. We have customers who their
 24 only criteria for shipping to Pease &

1 in the United States. We know how many
 2 crown and bridge laboratories there are
 3 in the United States, and then we also
 4 know the manpower involved in these
 5 dental laboratories. And from
 6 experience we know that a one or two-man
 7 lab, crown and bridge, produces a lot
 8 less scrap than a 30 or 40 or 100-person
 9 laboratory, so we have lists -- a list,
 10 and we broke it down into a manageable
 11 size.

12 One thing you don't want to do,
 13 especially with a new salesperson, is
 14 give them too many people to call on.
 15 They're wandering around. You target.
 16 "Let's target these 16 for the next
 17 eight weeks, see how we do, and then
 18 gauge where we are with them, what sort
 19 of progress have we made, what sort of
 20 interest do they have in our service."
 21 These things have to be taught to
 22 people, new dental representatives, and
 23 there are concepts that we can sit here
 24 and talk about, but in order to really

1 Curren is they didn't like the return at
 2 the last refiner. And some of these
 3 guys we can convert, some of them --
 4 they didn't like the return at this
 5 refinery, that refinery. They don't
 6 like the return at our refinery. They
 7 won't like the one at the next. Some of
 8 them go the whole circle and come back,
 9 and you can convert them into loyal
 10 customers or repeat customers. Some of
 11 these transactionally customers have no
 12 loyalty to you, are not worth putting
 13 sales marketing dollars and effort into.
 14 Q. You said that Bethany was going to have
 15 larger customers. Who was going to
 16 provide those customers to her? Was
 17 that coming from the company, or did she
 18 have to go out and locate them?
 19 MR. ARONSON: Objection. Go
 20 ahead and answer. I am objecting for
 21 the record. You can answer it if you
 22 understand it.
 23 THE WITNESS: Okay.
 24 A. We know how many dental labs there are

1 get somebody to understand these
 2 concepts, they really have to listen,
 3 and if they do, they can be extremely
 4 successful.
 5 Q. So the answer is that you were going to
 6 provide her the names of the companies
 7 to go and call on, as you called them?
 8 A. Many of them, and she would, of course,
 9 get referrals, and she would, of course,
 10 have her list, and she would -- yeah,
 11 yeah. So it's really a combination,
 12 really.
 13 Q. You said earlier about new people that
 14 are new in the industry. Of course,
 15 she's not new. At this point she was
 16 working for you for five years; correct?
 17 A. You're talking about Bethany.
 18 Q. No, I was talking about Trish.
 19 A. No. You asked me about Bethany.
 20 Q. Okay, all this was about Bethany before.
 21 A. That's what you just asked me, that's
 22 what I just answered.
 23 Q. Okay, now in terms of Trish now, how did
 24 Trish do in the transfer process?

1 A. Trish does not like change. I had Trish
2 in my office once -- you're not going to
3 believe this --
4 Q. Let me ask you one question. You said
5 before, you said about the hurricane
6 that landed on the boat, is that about
7 Trish or Bethany you were referring to
8 in that answer?
9 MR. ARONSON: Let him finish his
10 answer, then you can ask the next
11 question. This is a repeated pattern.
12 A. I had Trish in my office once, and we
13 were discussing moving into the
14 commission schedule that the jewelry
15 people had, and Trish got so upset that
16 she stood up, left the room, left the
17 company, went outside, stormed around in
18 the street in front of the plant for
19 about 20 minutes, came back in, sat
20 down, and she told me that she quit
21 smoking for six months, and because I
22 was going to change her commission
23 structure, it was my fault, she had
24 resumed smoking.

1 not to make comments or not have her
2 present.
3 A. A precise answer is we have a talented
4 player who is adverse to change and
5 adverse to teamwork. We have a lone
6 player, very good working alone. To
7 integrate onto the team had to -- a lot
8 of nurturing, a lot of time, a lot of
9 patience, mentoring, and we got there.
10 Q. And when did you get there?
11 A. Bethany --
12 Q. No, I'm talking about Trish.
13 A. Do you want me to continue answering
14 questions?
15 Q. It's my deposition, Mr. Curren, so go
16 ahead and answer my question, sir.
17 MR. ARONSON: Are we going to
18 take a break?
19 MR. ACETO: We are going to take
20 a break in a minute, yes.
21 A. Bethany won her over.
22 Q. Bethany won who over?
23 A. Trish. Bethany was such a great
24 spirited team player. She played

1 MS. BERGEVINE: That's a fat
2 lie. That is such a lie.
3 MR. ARONSON: All right, we're
4 not going to be able to go on here if
5 Miss Bergevine is going to be making
6 comments.
7 MS. BERGEVINE: It's difficult.
8 I will be out here for a minute.
9 MR. ARONSON: Why don't we take
10 a break now.
11 MR. ACETO: I want him to finish
12 his answer. I don't want to interrupt
13 anything he said.
14 Q. Go ahead, Mr. Curren.
15 MR. ARONSON: As long as
16 Miss Bergevine is not interrupting and
17 making comments.
18 MR. ACETO: Miss Bergevine made
19 one comment and she walked out of the
20 room.
21 MR. ARONSON: You know your
22 client should not be making comments
23 during the deposition, and I would ask
24 that you please try to prevail upon her

1 soccer. She was really fun. She was
2 really talented. She could take this
3 hurricane and calm it down, and she won
4 her over, and it made my job a lot
5 easier, and it made the harmony in the
6 company a lot better. So I give Bethany
7 a lot of credit for dealing with what
8 she had to deal with when she walked in
9 the door and I said, "Here's your new
10 partner." She overlooked some things
11 that somebody else may not overlook and
12 did a heck of a job.
13 MR. ACETO: Why don't we take a
14 break here for a minute.
15 (Whereupon there is a brief
16 recess.)
17 MR. ACETO: Back on the record.
18 Q. So Mr. Curren, I'm not sure that you
19 answered the question that I asked you
20 before about what was Miss Bergevine's
21 compensation structure in 1996. Do you
22 recall any elements of it?
23 A. Yeah. It was an hourly pay --
24 Q. Right.

1 A. -- for a certain amount of hours per
2 week.
3 Q. What else?
4 A. Compensation based on performance, her
5 jobs produced.
6 Q. So it was based on a percentage of the
7 metals recovered from the lots; is that
8 right?

9 MR. ARONSON: Objection.

10 A. I'm not sure at that time if it was.

11 Q. Okay. And at some point did it become
12 based on a percentage of the metals
13 recovered from lots that she had
14 delivered to Pease & Curren from
15 customers?

16 MR. ARONSON: Objection.

17 A. Never a percentage.

18 Q. Okay.

19 A. Never a percentage.

20 Q. Well, what is your memory of what it
21 was, then?

22 A. Well, there's a relationship, a
23 relationship, but you wouldn't call it a
24 percentage.

1 I don't want to guess, but I want to be
2 as helpful as I can.

3 Q. Okay. So what production would I show
4 you that would help you remember what
5 she was paid for compensation?

6 A. Well, Trish and I were very careful to
7 document what our arrangement was, and
8 as Trish worked at the company, she
9 became more valuable, and she was
10 compensated better, and each time we did
11 that, it was documented.

12 Q. Documented in what way, sir?

13 A. On a piece of paper, in writing.

14 Q. And do you have those documents today?

15 A. I don't have them, no.

16 Q. Does the company have them?

17 A. No.

18 Q. No?

19 A. No. I saw the documents at my sister's
20 deposition, some of them.

21 Q. So the company does have those documents
22 and they were produced?

23 A. No, you produced them. You showed them
24 to me, like you're going to do now.

1 Q. What was that relationship?

2 A. Well, if you had a certain amount of
3 ounces come in, you received a certain
4 amount of money, but it's not -- I
5 wouldn't call it a percentage. It's a
6 payment based on ounces that were
7 settled to the customer.

8 Q. Did that payment vary depending on which
9 precious metal it was that was
10 recovered?

11 MR. ARONSON: Objection.

12 A. I don't think so.

13 Q. Did the amount that she was paid
14 increase based on the increased levels
15 of ounces that were recovered?

16 MR. ARONSON: Objection.

17 A. Yes.

18 Q. Do you remember at all what that pay
19 structure was?

20 A. I don't remember the pay structure
21 exactly. If you want me to look at some
22 of the production, I could do that, but
23 if you want me to guess, I can't really
24 guess. I have a lot of salespeople, and

1 Q. I show you the exhibits from
2 Miss Curren's deposition, Mr. Curren.
3 Why don't you tell me which documents
4 in there would help you figure out what
5 Miss Bergevine's compensation structure
6 was.

7 (Witness looking over exhibits.)

8 MR. ACETO: I think I would like
9 Mr. Curren to look -- I appreciate your
10 assistance, Mr. Aronson, but I think he
11 can look through them himself.

12 MR. ARONSON: They're already
13 marked as exhibits. We can have him do
14 that. I was going to put a -- he's not
15 as familiar with the numbers, and he's
16 going to go through them. You could
17 have done it yourself if you knew what
18 the exhibits were.

19 A. All right. February 12, 19 --

20 Q. Hold it, Mr. Curren. You're looking at
21 Exhibit No. 2; is that correct?

22 A. I don't know.

23 Q. Is that Exhibit No. 2 that you are
24 looking at?

1 A. It says M. Curren 2, KR 6/29/06.
 2 Q. That 2 means Exhibit No. 2, sir, so
 3 you're looking at Exhibit 2 to
 4 Meredith Curren's deposition?
 5 A. I will take your word for it.
 6 Q. And page 3, which is Bates stamped 0084;
 7 is that right?
 8 A. Yup.
 9 Q. Okay. And that's a document that you
 10 say reflected Miss Bergevine's
 11 compensation structure; is that right?
 12 A. This document is very helpful to answer
 13 your question.
 14 Q. But why is that?
 15 A. It says, "It is" --
 16 Q. You don't need to read it out loud, sir,
 17 just read it to yourself.
 18 MR. ARONSON: Why don't you take
 19 a look at all the documents in that
 20 exhibit, Mr. Curren, before you answer.
 21 (Witness looking through
 22 documents.)
 23 Q. Have you had sufficient time to review
 24 Exhibit No. 2, Mr. Curren?

1 A. Yeah.
 2 Q. Like what?
 3 A. I just -- my recollection is there's
 4 some other documents.
 5 Q. In the possession of Pease & Curren?
 6 A. No.
 7 Q. What documents do you recall today that
 8 are not part of Exhibit No. 2?
 9 A. I just think that -- we have '97, '99.
 10 I just think there would be some
 11 documents for 2000 and 2001.
 12 Q. There is a document for '96; correct?
 13 That's page 4.
 14 A. Yeah.
 15 Q. So it's your understanding that there's
 16 a document that was similar to these
 17 that was executed each year reflecting
 18 Miss Bergevine's compensation?
 19 A. No.
 20 Q. Isn't that what you just testified a
 21 second ago?
 22 A. No.
 23 Q. What are these other documents that you
 24 think exist?

1 THE WITNESS: Do you want me to
 2 thumb through all this stuff, too?
 3 MR. ARONSON: No. I think he
 4 wanted you to look at Exhibit 2. It's a
 5 multi-page document that he has given
 6 you. I want to make sure that you have
 7 looked through it all.
 8 (Witness looking through
 9 document.)
 10 Q. Mr. Curren, are these the documents that
 11 you were referring to earlier in your
 12 testimony, Exhibit No. 2?
 13 MR. ARONSON: Objection.
 14 A. These documents lay out the compensation
 15 structure between Pease & Curren and
 16 Trish Bergevine for several years.
 17 Q. And these were the documents that you
 18 were referring to that you needed to
 19 look at earlier; is that right?
 20 A. That's correct, yes.
 21 Q. Are there any other documents that are
 22 not in there that you would like to
 23 review relating to Miss Bergevine's
 24 compensation?

1 A. Similar to these documents where Trish
 2 received essentially raises or territory
 3 changes. I'm just -- my recollection is
 4 there was more territory changes or
 5 raises than what we have here. That's
 6 my recollection.
 7 Q. Fair enough. And I'm asking you in
 8 2000 and 2001, you think there should
 9 have been some kind of documentation as
 10 to how her compensation was effected?
 11 A. I think so, yes.
 12 Q. How many documents, two or three or
 13 more?
 14 A. Two or three.
 15 Q. So it's your understanding that each
 16 time her compensation structure changed
 17 in some way, there was written
 18 documentation between Pease & Curren and
 19 Miss Bergevine?
 20 A. Yes.
 21 Q. If you could turn, Mr. Curren, to the
 22 last page of Exhibit No. 2 -- this
 23 document -- do you recall creating this
 24 document in 1999?

1 A. All the documents that were executed
2 were signed by both of us, so I would
3 say this -- there was at one time
4 existing this document executed, signed
5 by both of us, even though this is --
6 you know, it's a document, but the
7 policy was that I sign them, Trish signs
8 them, so we didn't have any -- it was
9 clear to everybody that -- you know, it
10 wasn't a document floating around. It
11 was, you know, an example of what I
12 would like to have happen or this is a
13 good idea or something like that.
14 Q. So my question to you is is that
15 the compensation structure for
16 Miss Bergevine as of 1999, as of
17 January 1st?
18 A. I can assume it is, but I can't say
19 without seeing something with my
20 signature on it.
21 Q. So do you question the validity of that
22 document?
23 A. No.
24 Q. It's on Pease & Curren's stationery;

1 A. No.
2 Q. Who would have done that in response to
3 document requests in this litigation?
4 A. Heather Blanchard.
5 Q. So turning to Bates-stamped document
6 0136, sir, which is the last page
7 of Exhibit 2, sir, was it your
8 understanding in 1999 that
9 Miss Bergevine would get \$75 for each
10 job which contained five ounces of gold,
11 palladium, or a combination of the two?
12 A. I think we have to back up and talk
13 about Trish's situation. This is
14 recoverable metal. We're talking about
15 recoverable metal that was on a
16 settlement sheet. That's what the
17 standard used to pay all salespeople
18 are, recoverable metal.
19 Q. Okay, I understand where you're going.
20 A. I'm not finished.
21 Q. Try my question.
22 A. I'm not finished.
23 Q. Yeah, but you have to answer my
24 question. These are things that I will

1 right?
2 A. I do not question the validity of the
3 document, no. I don't think anybody
4 made this up or anything. I think it's
5 something that either I made up or
6 somebody -- the sales manager made up
7 or, somebody made up and said, "Maybe
8 this is what we want to do with Trish,"
9 and then we probably did that with
10 Trish. But if you showed me another
11 document that I signed and it was a
12 little bit different, I would say,
13 "Well, that's the one that we agreed
14 on."
15 Q. Okay. And are there any other documents
16 that you're aware of that Pease & Curren
17 has relating to Miss Bergevine's
18 commission structure that are not
19 attached as Exhibit 2?
20 A. Pease & Curren has?
21 Q. Yes.
22 A. No, I don't have any documents.
23 Q. Have you yourself looked at her
24 personnel file to see what's in there?

1 get into later with you, Mr. Curren.
2 I'm asking you this question. Was this
3 your understanding that she would get
4 \$75 for each job which contained five
5 ounces of gold? It just requires a yes
6 or a no answer.
7 A. Once again, I think we should back up
8 and understand that we're talking about
9 recoverable metal and on the settlement
10 sheet. Those are the parameters that
11 the commission structure is based on.
12 In that context, I will answer your
13 question yes.
14 Q. Okay. So where in this document does it
15 say that on recoverable metals specified
16 in the settlement report? Where does it
17 say it on here, Mr. Curren?
18 A. Well, it doesn't say it on there.
19 Q. So, let's go to paragraph 2, Mr. Curren,
20 of Bates stamp 0136. In addition to the
21 \$75 a job, on a job of five ounces of
22 gold, palladium, or a combination of the
23 two, Miss Bergevine was going to get
24 five dollars per ounce; correct, for

1 each ounce of gold and palladium; is
2 that right?

3 A. Recovered.

4 Q. Right. Well, that's what you say,
5 recoverable as specified on the
6 settlement report; right? That's what
7 you want to add?

8 MR. ARONSON: Objection.

9 A. That's the terms. We have to talk
10 within parameters that work with this
11 document, with this company, and I am
12 quite willing to help you out as long as
13 we understand what we are talking about.
14 I'm going to answer the question yes,
15 that's her payment.

16 Q. So it would be your understanding that
17 this doesn't refer to what's specified
18 in the tracking system for recoverable
19 ounces in a particular job?

20 A. This has nothing to do with the tracking
21 system.

22 Q. And you made that clear to
23 Miss Bergevine when you exchanged
24 this --

1 need to understand." If you have a
2 salesperson who doesn't understand a
3 commission structure, you might as well
4 not have a commission structure, it's
5 totally ineffective. You have to have
6 people motivated by the commission
7 structure, and they really have to
8 understand it, and it has to drive their
9 activity.

10 So, I explained the process and
11 how the material comes in, and I
12 explained, "We have charges that we
13 deduct from the material, and then we
14 have a settlement report. And the
15 settlement report is going to rule when
16 it comes to commissions. And, you know,
17 I know it's going to be disappointing to
18 you sometimes if you think that it was
19 4.9 ounces and if we didn't -- of
20 palladium, and if we didn't take out our
21 90 percent, then it would have been
22 five." And she was a great advocate of
23 that, and that is what later on she
24 would -- one of her things that she

1 MR. ARONSON: Objection. Go
2 ahead.

3 A. Absolutely, crystal clear.

4 Q. You told her there was a tracking system
5 and that there was a settlement report,
6 and that these numbers and her
7 compensation would be based on these
8 settlement reports?

9 MR. ARONSON: Objection. Go
10 ahead and answer, if you can.

11 A. Absolutely, crystal clear.

12 Q. So you explained to her that there was a
13 tracking system?

14 A. Yes.

15 Q. When was it that you first explained to
16 Miss Bergevine that there was a tracking
17 system?

18 A. The day she started work and we made our
19 deal.

20 Q. What exactly did you say to her in
21 reference to the tracking system?

22 A. I said, "Trish, you have to understand
23 the way the commission structure works.
24 It's a little bit complicated, but you

1 wanted to talk about a lot. But I
2 explained to her at the beginning --
3 this is an anticipatable problem with
4 salespeople. If only we didn't have
5 charges, my job would have been
6 palatable. Very disappointing, and it
7 needs to be explained upfront, and if --
8 it needs to be explained crystal clear
9 upfront because it's going to happen,
10 it's going to come up with salespeople
11 and their commissions.

12 Q. Back to my question Mr. Curren.

13 A. No, I'm not finished.

14 MR. ARONSON: Let him finish his
15 answer.

16 Q. This isn't an answer responsive to my
17 question, Mr. Curren, so I'm asking you
18 again, what did you specifically say to
19 her about the tracking system?

20 MR. ARONSON: He's going to
21 finish the answer to the question.

22 A. That's exactly what I was --

23 Q. Tell me what you said about the tracking
24 system. What did you tell her about the

1 tracking system? You haven't mentioned
 2 those words, "tracking system," in any
 3 way in what you just answered. I am
 4 asking what did you specifically say to
 5 her about the tracking system?
 6 A. I said, "The tracking system is not
 7 going to rule in commissions. The
 8 settlement system, the settlements are
 9 going to rule. There's going to be
 10 differences. It's going to be
 11 disappointing sometimes when you go out
 12 there and work your butt off and it
 13 doesn't make the five ounces, or you add
 14 up the month's pay and you think maybe I
 15 should have made more if I didn't deduct
 16 the charges," but it's the same for all
 17 the salespeople at Pease & Curren.
 18 Everybody understands that that's where
 19 we set up the commission structure, on
 20 the settlement, not the tracking, and
 21 every salesman needs to know that. I
 22 anticipated the problems, and I
 23 anticipated that, and you have to
 24 explain it to them. You can't just have

1 Q. And every salesperson is advised that
 2 this tracking system is solely for
 3 internal purposes?
 4 A. Absolutely.
 5 Q. And everybody is told that the
 6 settlement report is what you're going
 7 to get your commissions off of?
 8 A. Absolutely.
 9 Q. And the charges that you referenced
 10 before -- you keep mentioning "the
 11 charges," what do you mean by "the
 12 charges"?
 13 A. Well, we deduct the charges.
 14 Q. What are those charges?
 15 A. Well, they're a percentage and they're a
 16 dollar amount.
 17 Q. For what?
 18 A. For refining.
 19 Q. Can you be more specific as to what the
 20 charges are?
 21 A. They vary for different lots.
 22 Q. Okay. A typical lot, is it based on
 23 weight?
 24 A. Based on weight, based on incoming

1 salesmen coming in going, "Oh, well,
 2 look at this assay over here," and then,
 3 "Where's my commission?" I mean,
 4 they're salespeople. "Where's my" --
 5 that's what they do. "We're paying on
 6 recoverable metals, and that's going to
 7 be reflected in the settlement, and
 8 that's what you're going to get," and --
 9 Q. And that's what you told Miss Bergevine
 10 when you first hired her?
 11 A. Absolutely, that and more. Yeah.
 12 Q. So as a procedure, as a standard in the
 13 -- strike that. As a practice and a
 14 procedure in the office, you advise
 15 every salesperson of what you just said;
 16 is that right?
 17 A. You have to.
 18 Q. And you tell them to disregard the
 19 tracking system, that the commissions
 20 will not be paid on that?
 21 A. Absolutely. No, we're not -- no.
 22 Absolutely, that's correct. "You're not
 23 getting paid on" -- "Nobody, nobody is
 24 getting paid off" --

1 weight, based on metal content. We
 2 have a whole group of charges for a
 3 whole group of different types of
 4 products.
 5 Q. And where are those charges listed in
 6 writing that you do?
 7 MR. ARONSON: Objection. Go
 8 ahead.
 9 A. You mean where were they listed in 2002
 10 or --
 11 Q. Let me rephrase it. I will go a
 12 different way, Mr. Curren. Who's in
 13 charge of making up, imposing these
 14 charges now?
 15 MR. ARONSON: Objection.
 16 A. Who's posing the charges?
 17 Q. I said imposing, Mr. Curren.
 18 MR. ARONSON: Do you
 19 understand --
 20 A. Imposing?
 21 Q. Yes. Do you have trouble with that
 22 word?
 23 MR. ARONSON: Objection. Answer
 24 it, if you can, and if you don't

1 understand it --
 2 A. I don't understand it.
 3 Q. Who decides what the charges are for
 4 each lot, Mr. Curren?
 5 A. I do.
 6 Q. That's today. Who did it in 2000 and
 7 2001?
 8 A. Jay.
 9 Q. And when did that responsibility change
 10 to you?
 11 A. When Jay left.
 12 Q. Which was when, again, 2002?
 13 A. I think it was 2004 or 2005.
 14 Q. And do you have a standard procedure
 15 that you implement in determining the
 16 charges for each lot?
 17 A. A standard procedure? We have weight-
 18 based -- we have rates based on the
 19 material makeup and weight and content.
 20 Q. And are those rates written down
 21 somewhere in your office?
 22 A. Back in 2002?
 23 Q. No, today.
 24 A. Today, yeah, they're written down.

1 Q. Where are they written down?
 2 A. They're written down on my desk.
 3 Q. On a piece of paper, on your desk
 4 blotter, where?
 5 A. On my desk.
 6 Q. Literally on your desk, on the top of
 7 your desk?
 8 A. Yeah.
 9 Q. Not on a piece of paper?
 10 A. No, no, no. They're on a piece of paper
 11 on my desk.
 12 Q. Okay, well, that's what I'm asking you
 13 about. And how big is this piece? Is
 14 it one piece of paper?
 15 A. Just like this.
 16 Q. One piece of paper?
 17 A. It's three or four.
 18 Q. Three or four pages?
 19 A. Yeah.
 20 Q. Have you produced that in this
 21 litigation?
 22 A. I have no idea.
 23 Q. What does it look like? Is it
 24 handwritten or is it typed?

1 A. It's typed.
 2 Q. Who typed it up?
 3 A. Somebody. One of the administrative
 4 assistants.
 5 Q. But not you?
 6 A. No.
 7 Q. Where did that information come from
 8 that was typed up by one of the
 9 administrative assistants?
 10 A. You're talking in 2002?
 11 Q. I'm talking about the document that is
 12 on your desk today back at your office
 13 that you're relying on to determine the
 14 charges for each one of these jobs.
 15 A. I raised prices January? February, I
 16 think? February 1st I raised the
 17 charges, and I said to somebody at a
 18 sales meeting, "We're raising the
 19 charges. Here they are. We are raising
 20 our charges." Wrote them down on the
 21 desk.
 22 Q. Now you were raising the charges. Were
 23 you also raising the rates that you were
 24 paying for the precious metals that were

1 recovered?
 2 MR. ARONSON: Objection.
 3 A. Raising the rates?
 4 Q. Yeah.
 5 A. No.
 6 Q. How do you determine what the rates are
 7 to pay for the precious metals, is that
 8 based on the market rate?
 9 A. No.
 10 Q. What is it based on?
 11 A. It's based on what we can recover from a
 12 specific item profitably.
 13 Q. And so how do you determine how to
 14 compensate a customer who delivers a job
 15 to you?
 16 A. With a lot of thought and very
 17 carefully.
 18 Q. Say you recover five ounces of gold, at
 19 what rate do you reimburse the client?
 20 MR. ARONSON: Objection.
 21 Q. Do you understand the question, sir?
 22 A. It's a hypothetical question. We have
 23 charges. It depends upon what the
 24 material is. Do you want to pretend

1 it's --
 2 Q. I'm asking before you get to the
 3 charges, don't you determine what the
 4 rate -- how much ounces of a precious
 5 metal is in the lot times the rate, and
 6 then you do the charges?
 7 MR. ARONSON: Objection.
 8 Q. Isn't that how you calculate it?
 9 A. It's not as simple as that. You have --
 10 incoming weight is one charge. You have
 11 to understand, really do have to
 12 understand, that people don't send pure
 13 gold to Pease & Curren or pure silver --
 14 people send scrap. Think of us as a
 15 glorified junkyard. We have piles of
 16 stuff that comes in, it's
 17 unrecognizable, and if you want to
 18 have bigger piles of stuff coming in
 19 unrecognizable and without precious
 20 metals, then you can have very low
 21 charges. So in order to alleviate that,
 22 you have to have an incoming charge
 23 that's fairly substantial to give the
 24 customer an incentive not to send drums

1 of garbage or, you know, stuff that is
 2 too low grade to process or something,
 3 so that's one component. And then you
 4 have another component, after you
 5 incinerate the material -- some stuff
 6 doesn't burn down at all, so you have
 7 2000 pounds of something -- let's -- you
 8 asked me a hypothetical question, I will
 9 give you a partially hypothetical
 10 answer -- sludge, and it burns down from
 11 2000 pounds to 1900 pounds, and you have
 12 1900 pounds of material that's going to
 13 get sent out to Heraeus or Umicore or
 14 someplace, and they're going to charge
 15 you by the incoming weight, so you have
 16 to charge by the incoming weight and the
 17 afterburn. You may have another
 18 customer, who's maybe a better customer,
 19 who would send in 2000 pounds. The
 20 material may burn down to 100 pounds.
 21 You would charge him less on the after-
 22 burn possibly if his gold content was
 23 higher; that would be a more profitable
 24 testament in many cases.

1 Q. So will you produce a copy of these
 2 rate charges that you have on your desk,
 3 Mr. Curren?
 4 MR. ARONSON: Any requests
 5 should be made to counsel.
 6 Q. Have you produced a copy of that to
 7 counsel?
 8 A. I don't know. I don't know. I just
 9 don't know.
 10 MR. ACETO: Well, I'm asking
 11 you, then, formally, on the record, to
 12 produce a copy of that to counsel and
 13 have it sent to me; that is obviously
 14 part of the case.
 15 Q. What did you do with the old rate
 16 charges after you said you -- I think
 17 you said you did a new one. Was it
 18 February 1, 2006 that you did a new rate
 19 charge; is that right?
 20 A. You know, I just did another one last
 21 week.
 22 Q. What did you do -- that was my question.
 23 What have you done with the old ones
 24 that you replaced them with the new one?

1 A. I throw them in the wastebasket.
 2 Q. Okay, so --
 3 A. In the refinery, there's a couple of
 4 different sets of different charges
 5 floating around. It's the last thing
 6 you want.
 7 Q. And why did the rate charges change from
 8 February to last week?
 9 A. We have an area called gold-filled,
 10 which is very strong -- historically a
 11 very strong area for Pease & Curren.
 12 Women, for 20, 30 years, have been
 13 wearing gold-filled earrings and jewelry
 14 and costume jewelry. It's a big, big
 15 product that a lot of jewelers have, and
 16 when it comes in, it comes in in fairly
 17 large amounts of bulk, and it becomes
 18 something that historically would go
 19 through the refining process at Pease &
 20 Curren as opposed to being sent out to
 21 one of these outside refiners.
 22 Q. Right.
 23 A. So we had set up this quite intricate
 24 and expensive system where --

1 Q. Does this relate to the rate changes?
 2 A. Yes.
 3 Q. Okay, go ahead.
 4 A. You asked me about the rate change last
 5 week, and I am going to explain it to
 6 you.
 7 Q. All right.
 8 A. But you need to -- so anyway, it's
 9 called the copper bullion circuit, and
 10 the copper bullion circuit is -- you
 11 would take the gold-filled material --
 12 which is jewelry -- and you melt it into
 13 what is called an anode. Then you have
 14 a copper cathode, and we would take the
 15 anode and the copper cathode, and we
 16 would hang them, suspend them in a vat
 17 of acid, and then we would introduce
 18 heat and electricity. Now from high
 19 school chemistry, you might remember the
 20 electrometer series -- or you might not
 21 -- but if you set it up correctly, you
 22 understand the electrometer series, you
 23 can make the gold fall out of the copper
 24 into a slime, and then you take the

1 jewelry; correct, or is it for all gold?
 2 A. No, this is just for the gold-filled. I
 3 am trying to give you an example of how
 4 pricing changes -- you know, pricing
 5 changes to meet the market conditions,
 6 because you could very easily overlook
 7 this and keep receiving this gold-fill,
 8 again at an unprofitable price. Now
 9 it's sitting over here, and gold goes
 10 from 650 down to 599, and then you
 11 really don't have enough to run the
 12 sells, and then you can't really -- when
 13 you go to try to sell it to somebody,
 14 nobody wants to buy it.
 15 Q. So when you changed the rates last week,
 16 you didn't change every rate, you
 17 changed only the rates relating to the
 18 gold-filled jewelry or gold-fill metals
 19 that you received?
 20 A. Don't worry. There was plenty of
 21 complaining from the salespeople. There
 22 was plenty of complaining. Any time you
 23 change the rates, it's like a major
 24 theatrical get-together because you

1 slime out of the bottom, you put it in a
 2 vessel, glass-lined vessel, and you
 3 precipitate the metal. Now to be cost
 4 effective, you have to have a certain
 5 amount of feed, and unfortunately gold-
 6 filled jewelry has gone out of style,
 7 but our customers -- some of them are
 8 still using it, chain guys, gold-filled
 9 chain and a few guys, so now all of a
 10 sudden, I turn around and I have a gold-
 11 fill coming in, but I don't have enough
 12 gold-fill to work at this size anymore,
 13 so I say to myself, "Okay, maybe I can
 14 sell some of it to one of these other
 15 refiners." So I went out and I got
 16 quotes from all the other refiners, and
 17 the quotes weren't very good at all, so
 18 I said, "Okay, I got to raise my prices
 19 here. I got to go from twenty-five
 20 cents an ounce on the incoming to
 21 seventy-five cents, and then I have to
 22 go from accountability of 97 down to
 23 90," so I raise --
 24 Q. This is only for the gold-filled

1 always raise them, and then the sales
 2 guys are, "What about my customer? He
 3 can't go from twenty-five to
 4 seventy-five." It's a major event.
 5 Q. Why are the salespeople concerned about
 6 it, because it's going to affect their
 7 clients or it's going to affect their
 8 commissions?
 9 A. Both, both. Plus they have to go tell
 10 the guy, "Guess what, prices are up."
 11 Q. Mr. Curren, can you describe for me the
 12 process from the time that the tracking
 13 system data is entered into the computer
 14 system until the time a settlement
 15 report is sent out, what happens between
 16 those two steps?
 17 A. I don't use the tracking system.
 18 Q. You don't even look at the tracking
 19 system?
 20 A. I have never entered one thing into the
 21 tracking system, nor have I taken one
 22 thing out of the tracking system.
 23 Q. In all the years you worked at Pease &
 24 Curren?

1 A. Well, the tracking system is fairly new.
2 I am not a computer guy, so I am not a
3 tracking system guy. I've been -- my
4 sister has diligently shown me how to
5 get to the tracking system, except on
6 occasions I have to navigate my way to
7 it.

8 Q. You're saying the tracking system is
9 fairly new. When was it implemented at
10 the company?

11 A. I don't know. I think -- maybe -- I
12 don't know. A few years ago. I'm not
13 sure exactly.

14 Q. Prior to 2002?

15 A. Yes, I think it was prior to 2002, yeah.

16 Q. Prior to Miss Bergevine's employment?

17 A. Yes.

18 Q. Describe for me, sir, if you're not
19 involved in the tracking system, what's
20 the process from the time that the assay
21 ticket is completed -- and I mean all
22 the data is entered on the assay ticket
23 -- until the time that settlement report
24 is sent out to the client, can you

1 the customer, with the realization that
2 it's not going to get homogeneous
3 because you have such divergent melting
4 temperatures between gold and platinum
5 group metals, and you have them combined
6 together. So you have to think of the
7 platinum not so much as the precious
8 metal or valuable item, but you have to
9 think of it as a contaminant, so it
10 contaminates the gold. Now when I look
11 at a dental lot, or for that matter any
12 lot, I have kind of a rule which I tell
13 the salespeople, "If it ends in i-u-m,
14 it's difficult -- it's a periodic table.
15 You got platinum, palladium -- but if
16 it's selenium, titanium, chromium --
17 it's not a perfect rule, but it works
18 for our refinery -- if it has i-u-m in
19 it, at the end of it, as opposed to
20 zinc, as opposed to nickel, then you
21 know you're not going to get the perfect
22 homogeneous mix because of the melting
23 temperatures and because of our
24 capabilities in the marketplace. So,

1 describe to me that process?

2 A. Oh, yeah. Do you want to limit it to
3 dental --

4 Q. Yeah, why don't we limit it to dental.

5 A. -- or go all over the spectrum.

6 Q. Let's limit it to dental and to the
7 2001, 2002 time frame, if you have
8 personal knowledge of that. Let me
9 ask you, do you have personal knowledge
10 as to how the procedure went back then?

11 A. Yeah.

12 Q. Okay, please.

13 A. All right. The dental jobs are the most
14 difficult jobs to get homogeneous. In
15 fact, there are people who will tell you
16 it's impossible to get them homogeneous.
17 At Pease & Curren we can't get them
18 homogeneous. So, you have too many
19 different elements and deleterious
20 substances in them to get them
21 homogeneous. So, we're buying it from
22 the customer. We're doing our best to
23 get a sample that relates to the amount
24 of precious metal in it so we can pay

1 the material comes in a bullion and it
2 may have teeth in it, it may have zinc,
3 in it, it may have titanium, whatever it
4 has in it, so if you can pull some of it
5 out to start with, you're much better
6 off. Just less contaminants. Try to
7 segregate the precious metals a little
8 bit. Then you take it, melt it. If it
9 has iron in it, you add copper to it.
10 Now theoretically you could have it
11 become more homogeneous by adding more
12 copper to it because copper brings down
13 the melting temperature of the platinum
14 and the palladium, and it helps it mix
15 better. But if you have iron in it, it
16 makes it more difficult to get a good
17 homogeneous sample. The problem with
18 that is you can assay a sample that is
19 not homogeneous from here to kingdom
20 come, and you're not going to get very
21 accurate numbers. You're going to get a
22 pretty good estimate, sufficient to pay
23 our customers and keep them happy. It's
24 a lot of chemistry and a lot of science,

1 but it's not NASA and it's not Bell:
 2 Labs, so --
 3 Q. Let's go back to my question, what's the
 4 process from the time that the assay
 5 ticket is completed till the time you
 6 sent out the settlement report, what's
 7 the process involved at Pease & Curren?
 8 A. Okay, so --
 9 Q. Because all that stuff you were just
 10 describing --
 11 A. That's sampling, that's sampling.
 12 You're not interested in sampling?
 13 Q. All the stuff you were describing before
 14 is stuff that was done before the assay
 15 ticket is completed; correct? Getting
 16 the homogeneous sample and adding
 17 copper, that's all done before the assay
 18 ticket is completed?
 19 A. In many occasions, but not always.
 20 Q. So what I'm asking you, what is the
 21 standard procedure from the time the
 22 assay ticket is completed until the time
 23 you sent out the settlement report,
 24 what's the procedure in the office?

1 A. Just on the ticket?
 2 Q. The ticket is completed now.
 3 A. It's completed.
 4 Q. And you're sending out a settlement
 5 report to the client.
 6 A. It's completed?
 7 Q. Yes.
 8 A. Okay.
 9 Q. What's the procedure in the office to
 10 determine --
 11 A. Do you want me to talk about somebody
 12 entering it into the tracking system?
 13 Q. You just told me you're not involved in
 14 the tracking system.
 15 A. Well, I'm not.
 16 Q. So that is why I am asking about the
 17 assay ticket instead.
 18 A. So you're asking what I do?
 19 Q. What you do today.
 20 A. What I do.
 21 Q. What Mr. Pease did before. That's why I
 22 was asking if you had personal knowledge
 23 in 2001, 2002. I'm asking you about
 24 that procedure.

1 A. Why don't you ask the question again so
 2 it's clear for the record.
 3 Q. I'm asking the procedure you implement
 4 today that was implemented by Mr. Pease
 5 back in 2001, 2002 to get those final
 6 numbers in the settlement report from
 7 the assay ticket.
 8 A. Okay. I get the assay ticket. I get a
 9 ledger card. I get the paperwork,
 10 incoming paperwork. I take the assay
 11 ticket. I read it. I randomly recheck
 12 the calculations. I place a number on
 13 the ledger card. I give it to Marianne.
 14 She writes up the settlement report,
 15 prints out a check -- unless the
 16 customer doesn't want a check, they want
 17 gold back or they want the metal held or
 18 whatever.
 19 Q. Right.
 20 A. There's all sorts of options.
 21 Q. But that's the procedure that you just
 22 described to me?
 23 A. Yeah.
 24 Q. So the ledger card -- what is a ledger

1 card?
 2 A. It's bigger than this.
 3 Q. By "this," you mean an eight-and-a-half
 4 by 11 piece of paper?
 5 A. Yeah, it's more of a permanent record.
 6 Q. Is this ledger card what was used when
 7 Mr. Pease was doing this procedure?
 8 A. Oh, yeah.
 9 Q. And do you save the ledger cards?
 10 A. Well, we save some of the ledger cards,
 11 and we discard some of the ledger cards.
 12 Q. Which ones do you save?
 13 A. The customers that are non-
 14 transactional.
 15 Q. The repeat customers, you save those
 16 ledger cards?
 17 A. We've determined if somebody hasn't
 18 shipped to us in two years, then they're
 19 not really a customer. So you can keep
 20 the ledger card if you want, but it's
 21 not doing you any good.
 22 Q. What's the purpose of keeping a ledger
 23 card for a repeat customer?
 24 A. It's sort of a duplicate of the computer

1 system. I like it, some of the
 2 salespeople like it. Grab it really
 3 quick. You can talk to a customer on
 4 the phone really quick. You can -- I
 5 mean, it has its uses. Some people
 6 prefer the computer. I'm not a computer
 7 guy. I'm like, "Go get that ledger
 8 card," and I say to the guy, "Remember
 9 the stuff you sent us eight months ago?
 10 Why don't we -- when are we getting that
 11 again?" It's a sales tool. It's a
 12 record of behavior that you can use to
 13 sell, to market. It's a quick place to
 14 find a phone number. In other words, is
 15 the guy on the other end of the phone
 16 the guy you really want to talk or is he
 17 just the accountant, that type of thing,
 18 so it's got a lot of purposes. I like
 19 it.
 20 Q. So when you say you grab a ledger card,
 21 you're grabbing a form ledger card to
 22 fill out?
 23 A. Whatever. It's cardboard, kind of, and
 24 it's bigger, so it can withstand getting

1 passed around the office and getting
 2 pulled out.
 3 Q. But it's a preprinted form that you
 4 complete for each job?
 5 A. Yeah.
 6 Q. And you said that you take the incoming
 7 paperwork. What's the incoming
 8 paperwork?
 9 A. Well, you might have a different couple
 10 types. One piece of incoming paperwork
 11 would be like -- let's say a guy sent
 12 you a letter. "I am sending you my
 13 dental scrap. It weighs five pounds.
 14 I'm from Wisconsin. I met Trish or
 15 Rochelle. She was very nice. I'm
 16 sending scrap. I have been collecting
 17 it for three years." There's
 18 information on it -- and another type is
 19 when it comes in the door, we -- it gets
 20 categorized, and the manager will take
 21 it and he'll write notes down. He'll
 22 say, "Okay, this drum came in. It had a
 23 seal on it. It didn't have a seal on
 24 it. The drum came in, it was rusty.

1 This drum came in, it was full of water.
 2 This came in plastic bags. This came --
 3 this has a lot of ceramic." Just
 4 description-type of thing. So you're --
 5 in other words, I would love to be able
 6 to look at every job, you know, before
 7 it goes in to be melted. I would love
 8 to look at every job after it's melted,
 9 and you find out after a while you can't
 10 do everything, so you record what
 11 happened on paperwork. I call it
 12 incoming paperwork. So it's a
 13 combination of things we produce and
 14 things the customers produce.
 15 Q. Where are the ledger cards maintained in
 16 the offices at Pease & Curren?
 17 A. In the office.
 18 Q. Can you be more specific?
 19 A. I can draw you a picture if you want.
 20 Q. Whose filing cabinet are they kept in?
 21 A. It's a common file. Everybody has
 22 access to it.
 23 Q. Is it by your office?
 24 A. No, it's around the corner. It's

1 underneath the blackboard where we keep
 2 the metal prices that we put up every
 3 day.
 4 Q. And who has access to the ledger cards?
 5 A. Anybody who works in the office.
 6 Q. Anyone who works in the sales office or
 7 anyone in the office?
 8 A. Anyone in the office and any manager
 9 from the plant and -- that's about it.
 10 Q. And how far back do the ledger cards go?
 11 How many years do you keep them?
 12 A. Usually two or three.
 13 Q. You said you randomly recheck the
 14 calculations on the assay ticket.
 15 How do you do that?
 16 A. With an adding machine.
 17 Q. And what specific calculations are you
 18 verifying are accurate?
 19 A. I'm verifying the metal contents or the
 20 weights to make sure they make sense.
 21 Q. Meaning you add up all the weights of
 22 all the metal contents, add them
 23 together?
 24 A. Not usually. Usually it's more back to

1 what you're talking about before, a
 2 percentage.
 3 Q. So the next step you say is you place a
 4 number of a ledger card?
 5 A. Yeah.
 6 Q. So my question to you is how do you
 7 calculate that number that goes on the
 8 ledger card?
 9 A. Well, I calculate it by looking at the
 10 assay and deciding what the estimated
 11 precious recoverable metal is. I got
 12 to get paid for it. I'm selling it, I
 13 got to get paid for it, so I look at
 14 that. And then I look at what it's
 15 worth or what the metal content is.
 16 Q. Are there any guidelines you go by in
 17 determining the number that you place on
 18 the ledger card?
 19 A. Well, we have our charges -- I certainly
 20 want to get those -- and then we have
 21 our metal content that may or may not be
 22 homogeneous, and we have tests that
 23 we've run on the thing, and if you --
 24 you know what it's kind of like? It's

1 kind of like navigating a boat before we
 2 had GPS. You learn how to -- where the
 3 boat is, where the metal is, what's
 4 going to happen to the metal when you
 5 combine it with something else, or if
 6 it's going through our refinery. We
 7 say -- we talk about dental. Dental
 8 it's always going somewhere else.
 9 Q. Right.
 10 A. So, say what's recoverable, that's the
 11 big question, right?
 12 Q. Right?
 13 A. What's recoverable? That is what
 14 Gregory wants to know, what's
 15 recoverable. So then we go back to what
 16 is platinum? Is that a valuable metal
 17 or is that a contaminant? Well, if you
 18 have 100 ounces of gold and you have one
 19 ounce of platinum or two ounces of
 20 platinum, I'm sure that some people
 21 would say, "I want to get paid for that
 22 two ounces of platinum," but can you
 23 recover that two ounces of platinum or
 24 100 ounces of gold? Can you? You

1 can't.
 2 Q. Why can't you?
 3 A. Because it would cost way too much money
 4 to get to do that. We'd have to set up
 5 a whole different type of refinery.
 6 Q. Of course, you're not doing the
 7 refining, you sending it out to another
 8 refinery?
 9 A. That's true.
 10 Q. And they have the same problem?
 11 A. They have the same problem. If you want
 12 to go down this road, I can go down this
 13 road with you really far and really
 14 explain some things to you about
 15 chemistry and recoverability.
 16 Q. But you don't have a background in that
 17 area, correct?
 18 A. Yeah, I got a huge background, been
 19 working in a refinery for 30 years.
 20 Q. You don't have any technical training in
 21 that area?
 22 A. I taught myself everything I need to
 23 know. It's kind of like running a farm
 24 or a bar.

1 Q. So are there any -- going back to this
 2 issue of the numbers that you placed on
 3 the ledger card, is there a set
 4 procedure in the office as to how you
 5 calculate the numbers, or is it just
 6 based on your experience in the
 7 industry?
 8 A. It's based on experience in the
 9 industry. We don't have a standard --
 10 you can't have a standard. These things
 11 are all different. Believe me, I wish
 12 we had a standard. I wish we -- that,
 13 you know, the things that came in, that
 14 you could get a homogeneous mix. I wish
 15 the things that came in were a lot
 16 easier to assay. I mean, it's -- you
 17 have to -- this is the card you have
 18 been dealt, this is the refinery you
 19 have, these are the restrictions you're
 20 working under, financially and
 21 chemically, so you work under them.
 22 Q. You have a lab that does the testing,
 23 and then there's a metallurgist that is
 24 in charge of that lab; is that correct?

1 A. Yes.
 2 Q. What's the metallurgist's name today?
 3 A. Kim Michalik.
 4 Q. Is that a woman?
 5 A. That's a woman.
 6 Q. Dr. Michalik?
 7 A. No, Kim, K-i-m, Kimberly.
 8 Q. But her last name is Michalik, is that
 9 what you said?
 10 A. Yeah.
 11 Q. And why isn't Dr. Michalik involved in
 12 calculating the numbers that you placed
 13 on the ledger card?
 14 A. She is.
 15 Q. She is involved in it?
 16 A. Absolutely.
 17 Q. What is her involvement in determining
 18 the numbers that go on the ledger card?
 19 A. Her involvement is like when I come
 20 running out of the office and go find
 21 her and say, "What the heck is with this
 22 assay? This is impossible. Did you see
 23 this stuff when it came in? What color
 24 was it? Does this have iron in it? Who

1 did this assay? Why didn't they do a
 2 three-gram sample? Do we need a
 3 grammometric on this? Is this an AA?"
 4 Yeah, I'm chasing her around.
 5 Q. But you're asking for clarification on
 6 the assay ticket. I'm asking if she's
 7 involved in actually determining the
 8 numbers that go on the ledger card.
 9 MR. ARONSON: Objection.
 10 A. On the ledger card?
 11 Q. Yeah.
 12 A. No.
 13 Q. Do you do that yourself?
 14 A. Yeah. I'm responsible for it. She's
 15 responsible for getting me the
 16 information I need.
 17 Q. How about back when Mr. Pease was doing
 18 it, was he -- when he was completing the
 19 ledger cards, was anybody assisting him
 20 in completing the ledger cards?
 21 A. You mean physically writing on the
 22 ledger cards?
 23 Q. Yes, yes.
 24 A. No.

1 Q. I mean, calculating the numbers that are
 2 physically written on the ledger card,
 3 does anybody assist --
 4 A. The numbers are calculated when you get
 5 it.
 6 Q. Where are they calculated?
 7 A. In the office.
 8 Q. By whom?
 9 A. One of the administrative assistants.
 10 Q. They calculate the numbers that go on
 11 the ledger cards, the administrative
 12 assistants?
 13 A. They calculate the numbers that go on
 14 the assay tickets.
 15 Q. Right, I understand that. I'm not
 16 talking about the assay tickets, I'm
 17 talking about the numbers that go on the
 18 ledger cards.
 19 A. No, that's traditionally been the
 20 owner's job at Pease & Curren.
 21 Q. That's what I'm asking you about, no one
 22 else writes the number on the ledger
 23 cards, only you, and before you it was
 24 Mr. Pease.

1 A. Yes.
 2 Q. So I'm asking the calculations that
 3 you use to derive those numbers that
 4 you place on the ledger cards, does
 5 Dr. Michalik assist you in deriving
 6 those numbers?
 7 A. Yes.
 8 Q. How does she assist you in doing that?
 9 A. By giving me information.
 10 Q. But does she actually do the
 11 calculations with you?
 12 A. Yeah. If it's a difficult thing, yes.
 13 Yeah. I mean, if we have -- back to the
 14 i-u-m thing, if we have a job with --
 15 contaminated with chromium or we have a
 16 job that we've melted and we've
 17 precipitated the metals out, you can't
 18 -- I can't -- as I said, I can't do
 19 everything.
 20 Q. Let me ask you hypothetically: you have
 21 gone to Dr. Michalik and said, "I have
 22 100 ounces of gold and two ounces of
 23 platinum" -- I think you said -- and she
 24 tells you, "You're not going to be able

1 to recover the platinum, don't include
 2 that on the ledger." Is that the kind
 3 of discussion that you have with
 4 Dr. Michalik?
 5 A. No. I don't have to have that
 6 discussion because we have minimum
 7 recoverable amounts that we make known
 8 to our customers, and then we tell them
 9 it's a trace amount of platinum. We're
 10 not going to tell them it wasn't there,
 11 we're just telling them we're not God,
 12 we can't pay for it. If I can get my
 13 customer to not put the platinum in with
 14 the gold, I can pay him. A lot of times
 15 we have been very successful by saying
 16 to like a dental lab, I'd say, "Well,
 17 you had three ounces of platinum alloy
 18 you sent in, just keep it separate.
 19 Don't think of it as value, I am
 20 thinking of it as contamination. Just
 21 keep it separate. Send it to me
 22 separate. I won't even charge you for
 23 it," maybe I will say to him. "Just
 24 keep it separate. To you it's value,

1 to me it's a contaminant. Send it in.
 2 We will pay you for it." Everybody is
 3 happy if you can get to that point, but
 4 if they take it and throw it into a
 5 drum -- we're not miracle workers, we
 6 are refiners.
 7 Q. What's the minimum amount of platinum
 8 that needs to be present in a job lot to
 9 pay the customer?
 10 A. Point 6 percent.
 11 Q. Point 6 percent of the overall weight of
 12 the lot?
 13 A. No, the assay.
 14 Q. Point 6 percent of all of the precious
 15 metals, is that what you're saying?
 16 A. No, .6 percent of all metals.
 17 Q. Of all precious metals?
 18 A. No, metals.
 19 Q. All metals in general?
 20 A. Chromium, copper.
 21 Q. If it's more than -- if the presence of
 22 platinum is more than .6 percent in a
 23 particular assay of all the metals in
 24 that lot, then you will pay on the

1 platinum?
 2 A. You know, there's different things going
 3 on here. If this -- if it's
 4 recoverable, yes. If it's contaminated
 5 with chromium or selenium, I have to
 6 say, "Boys, this doesn't fit into the
 7 refining schedule. You have got this
 8 contaminant in here. It's not
 9 recoverable to us. We can't pay. I'm
 10 very sorry."
 11 Q. Forget about the contaminant. I'm only
 12 asking about the minimums. You said
 13 before -- you brought this up about the
 14 minimums, that the platinum might not be
 15 above the minimums, so I want to make
 16 sure I understand what you're saying
 17 now. So if it's more than .6 percent of
 18 all the metals in a particular lot after
 19 you have assayed it, then you will pay
 20 on the platinum; is that right?
 21 MR. ARONSON: Objection.
 22 Q. Isn't that what you just said?
 23 A. Well --
 24 Q. Assuming there's no contaminants.

1 A. No, that is not what I just said.
 2 Q. I am trying to understand, so please
 3 explain it to me again.
 4 A. Well, if it's below that --
 5 Q. -- you don't pay.
 6 A. Not always. If it's recoverable, we
 7 will.
 8 Q. But you brought that issue up that it
 9 would be below the minimum. I am trying
 10 to understand what the minimum is. The
 11 minimum is .6 percent on platinum; is
 12 that right?
 13 A. Yes.
 14 Q. And if there's a presence of platinum of
 15 more than .6 percent in an assay of all
 16 the precious metals, then you would pay?
 17 MR. ARONSON: Objection.
 18 A. If I could.
 19 Q. Meaning what by that, when you say, "if
 20 I could"?
 21 A. If I could recover it.
 22 Q. How do you know at that stage whether
 23 you can recover it or not? At the stage
 24 when you're writing the ledger card up,

1 how do you know whether it's
2 recoverable?
3 A. Well, in order to do that you'd have to
4 go look at the material in the plant and
5 say, "Oh, this is iron. I can't recover
6 that." You go, "Oh, this is copper. No
7 problem, we can get that back."
8 Q. And you involve Dr. Michalik in that?
9 MR. ARONSON: Objection.
10 A. Yeah.
11 MR. ARONSON: I think you have
12 been referring to her as a doctor. I
13 don't think that's correct. Go ahead
14 and answer.
15 Q. Is she a doctor?
16 A. No, she's a mother.
17 Q. But she heads the lab?
18 A. She's a chemist.
19 Q. I apologize, I thought she was a doctor.
20 Do you have any Ph.Ds in the area of
21 metallurgy or some area like that that
22 works in your lab?
23 A. No.
24 Q. Did you at any time have anyone with a

1 Ph.D?
2 A. Yeah.
3 Q. Who was that?
4 A. Mishra, M-i-s-h-r-a.
5 Q. When did Mishra leave, Dr. Mishra leave?
6 A. Several years ago.
7 Q. And have you ever replaced him with
8 another doctor?
9 A. No.
10 Q. Why was that?
11 A. I found a chemist who was fabulous,
12 Kimberly Michalik. She didn't have her
13 Ph.D, so what. She's wonderful. I
14 don't want too many doctors running
15 around.
16 Q. Are you familiar with the interaction
17 between Mr. Pease and Dr. Mishra when
18 they were doing -- when Pease was doing
19 the ledger cards?
20 A. Yeah, yeah.
21 Q. How much involvement did Dr. Mishra have
22 in the completion of the ledger cards?
23 A. Not much or zero. I would say zero.
24 Q. Zero?

1 A. Yeah.
2 Q. Did he even know about the existence of
3 the ledger cards?
4 A. Oh, yeah, he knew.
5 Q. Did he know about the existence of the
6 tracking system?
7 A. Yes.
8 Q. How do you know that he knew about the
9 tracking system?
10 A. Well, we had a computer consultant in
11 there who practically moved in to build
12 the thing. It was kind of like having a
13 construction crew come in here and put
14 in a new room. It was obvious.
15 Q. I'm not asking about the computer
16 system, I'm asking about the tracking
17 system. Do you have knowledge that he
18 was aware of the tracking system?
19 MR. ARONSON: Objection.
20 A. You know, if he came in here and said,
21 "I wasn't aware of the tracking system,"
22 I would say, "Oh, you weren't aware of
23 the tracking system?" I'm going to
24 answer your question yes, that he was

1 aware of it, but if he came in here and
2 said, "I wasn't aware of the tracking
3 system," I would say, "Oh, you weren't?"
4 It was that long ago. Everybody is
5 aware of the tracking system. It's not
6 such a major -- the tracking system is
7 not a major item at Pease & Curren. It
8 categorizes metal. You can categorize
9 metal without using it, you can use the
10 assay. You can use different methods of
11 doing it. Some people love it, some
12 people don't like it that much.
13 Q. So the procedure that you were
14 describing before as to how you derived
15 the numbers for the ledger cards, is
16 that pretty much the same procedure that
17 Mr. Pease implemented, to your
18 knowledge?
19 A. Yeah, he was -- yeah. He was -- did it
20 for a long time and did it pretty well.
21 Q. Was there a transition period where
22 Mr. Pease was advising you as to how to
23 complete the ledger cards?
24 A. No.

1 Q. So he just one day stopped when he left
 2 the company completing the ledger cards,
 3 and you took over the next day?
 4 A. Greg, let's go back through history, and
 5 I will tell you a really interesting
 6 piece of history. It will only take a
 7 few minutes. Back in the '80s I went
 8 out to California, bought a refinery,
 9 and ran it for ten years, so we had
 10 assays coming out our ears, material
 11 coming out our ears. It was a refinery,
 12 I ran it for ten years. I opened it,
 13 set it up, closed it down when we didn't
 14 need it anymore.
 15 Q. Ran it for Pease & Curren?
 16 A. Yeah, so we didn't need a transition.
 17 Q. I didn't mean to offend your
 18 intelligence in this area, I'm just
 19 asking you if he trained you in
 20 completing the ledger cards in some way.
 21 A. No, we train each other. It's kind of a
 22 teamwork thing.
 23 Q. So it's fair to say that you were
 24 involved in the ledger cards even when

1 here today a document from Pease &
 2 Curren that we recently located entitled
 3 2004 Outside Rep and Dental Rep Sales
 4 Commission Plans. It's dated February
 5 17, 2004, and it is my understanding
 6 that this applied in an earlier version
 7 to Miss Bergevine, and therefore we are
 8 producing it as part of our Response to
 9 the Request for Production of Documents;
 10 however, this is a confidential
 11 document, and it's a document that is
 12 used by Pease & Curren internally, and
 13 it's critical that this not be disclosed
 14 to anyone outside the company for
 15 matters unrelated to this case, for
 16 instance, to competitors or other people
 17 like that, and there is a concern by my
 18 client that we -- that it's agreed that
 19 Miss Curren and you will not disclose
 20 this to any competitors of Pease &
 21 Curren at any point in time.
 22 MR. ACETO: Miss Bergevine, you
 23 mean?
 24 MR. ARONSON: I stand corrected,

1 Mr. Pease was there, then?
 2 A. It was not my job, that was his job, and
 3 he really liked his job so -- he really
 4 did, he liked his job.
 5 Q. But he must have been on vacation --
 6 A. If he was on vacation, I did it for him.
 7 Q. So there were times that you filled in
 8 for him?
 9 A. Yeah, if he was on vacation, but it was
 10 his job. It was kind of like his desk,
 11 his computer, his pen, his personal
 12 little area.
 13 MR. ACETO: Do you want to take
 14 a break? Why don't we break here for
 15 lunch.
 16 (Whereupon there is a lunch
 17 recess commencing at 12:45 p.m.)
 18 (Exhibits 1-18 from Meredith
 19 Curren's Deposition remarked.)
 20 AFTERNOON SESSION
 21 RECOMMENCING AT 1:45 P.M.
 22 DIRECT EXAMINATION CONTINUED
 23 MR. ARONSON: Mr. Aceto, I
 24 wanted to mention that we had produced

1 Miss Bergevine will not disclose this to
 2 any competitors. Obviously you need it
 3 and can use it for purposes of this
 4 case, but we want to have your agreement
 5 that it will not be disclosed by either
 6 you or your client to competitors or
 7 other people in the refinery business
 8 who are not involved in this case.
 9 MR. ACETO: Why don't you write
 10 up a confidentiality agreement, and we
 11 will put it in place for all the
 12 discovery going forward.
 13 MR. ARONSON: Okay.
 14 MR. ACETO: Just a standard
 15 confidentiality agreement, that not
 16 aside we will not disclose any of the
 17 documents, and we will just sign it,
 18 both sides will sign it.
 19 MR. ARONSON: Fine. Are you
 20 agreeable to do that?
 21 MR. ACETO: To sign the
 22 confidentiality agreement?
 23 MR. ARONSON: Yes.
 24 MR. ACETO: Sure. If you want

1 to keep that and mark it confidential,
2 we can mark the documents that we deem
3 confidential between us --

4 MR. ARONSON: I'm producing it
5 today for you to look at. If you want
6 to look at it or question the witness,
7 you're entitled to do that, but I just
8 wanted your assurance that it would
9 remain confidential for purposes of this
10 litigation, and I understand that you
11 have agreed to that.

12 MR. ACETO: Why don't we mark
13 this as the next exhibit, please.

14 (Exhibit 20, Pease & Curren
15 2004 Outside Rep and Dental Rep Sales
16 Commission Plans, so marked.)

17 Q. Mr. Curren, your counsel has provided me
18 with this document that has now been
19 marked Exhibit 20 to your deposition.
20 Have you seen this document prior to
21 today?

22 A. Yes.

23 Q. Can you tell me what it is?

24 A. It's a sales commission plan.

1 get them, you want to grow them if you
2 can, and usually by doing that you have
3 to take away from a competitor, so we've
4 come up with this commission plan, and
5 as I said before, if they understand the
6 commission plan, it's really a road map
7 to how to spend their time.

8 Q. I understood your counsel to say there
9 was a similar plan to this one in effect
10 back in 2001; is that right, that
11 applied to Miss Bergevine?

12 A. 2001, yeah. This -- yeah.

13 Q. Where's the 2001 version of this?

14 A. It wasn't as neat and tidy. Certain
15 parts are on the computer and certain
16 parts are done by hand.

17 Q. In the 2001 version?

18 A. Yeah.

19 Q. So I got the idea that this was -- you
20 changed 2001 to 2004 and submitted this
21 to the employees. That's not the case?

22 A. Well, the reason this is here is because
23 you asked for when Trish became a
24 full-time employee.

1 Q. A sales commission plan for the
2 salespeople at Pease & Curren?

3 A. Well, this one is specific for dental
4 and -- but it's also generic for the
5 whole company, so it's both. But the
6 general components of it are to keep
7 existing accounts -- if you have
8 existing accounts, there's always
9 accounts that go out to our business
10 or for some reason don't use precious
11 metals, so just to stay even it's a
12 small victory, so we want to encourage
13 the people, to give them a baseline,
14 and then have them -- if they stay at
15 100 percent or even 90 percent, they're
16 doing really, really well because of
17 certain natural attritions. Some people
18 go above 100 percent; however, you don't
19 want them calling on the same customers
20 all the time, so you have another
21 component, which is new, large accounts,
22 repeat customers. And then you have the
23 sweeps component, and then you have the
24 new accounts. You don't want to just

1 Q. Right.

2 A. She went on the program.

3 Q. This program outlined in Exhibit 20?

4 A. Yeah.

5 Q. Okay.

6 A. But I don't have that one.

7 Q. Where is that one today?

8 A. I mean, I just didn't keep it around.
9 She quit, and I didn't keep -- it's --
10 the baseline has changed, the existing
11 accounts have changed. Certain
12 components in it changed, so I just
13 brought one.

14 Q. Where on this document would it show how
15 you calculate her commissions, what
16 page?

17 A. Well, the --

18 Q. Assuming this was in effect in 2001,
19 which we all know it wasn't.

20 A. Well, it was in 2002 when she became a
21 full-time employee.

22 Q. So where would she calculate her
23 commissions, on what page?

24 A. She would start here.

1 Q. Page 12?

2 A. You can start, yeah, with the lot size.

3 Q. Okay.

4 A. So we know percentages of lot sizes.

5 And as I told you before, it was 250 for

6 jewelry, but for her we wanted 25

7 because, as you can see, 83 percent of

8 the --

9 Q. This says 25 ounces, too, doesn't it?

10 A. That's what I am saying, that's what we

11 did for her. This is dental. Dental

12 its still 25 ounces.

13 Q. For everybody that worked --

14 A. Threshold, yeah.

15 Q. -- in dental. Not just for Patricia?

16 A. No, no.

17 Q. Everybody in the dental field, the

18 threshold was 25 ounces?

19 A. Yeah. So you see that. And then you

20 see -- you keep going through here. You

21 can see 2003.

22 Q. Again, for the record, you're looking at

23 page 15 of Exhibit 20?

24 A. Yeah, yeah. You can see what percentage

1 of lots are over 25, how it's gone up.

2 I am trying to get it to go up, so it

3 has some success. And then --

4 Q. I don't understand that statement at the

5 top here on page 15, which percentage is

6 over 25 ounces? 22 percent; is that

7 right?

8 A. Yeah, that's cumulative. In other

9 words, if you have 25 ounces, and you

10 send in for the year --

11 Q. For the whole year, it's not just one

12 lot?

13 A. No. At the end of the year you add them

14 up, and that's another component.

15 Q. But it's only -- back in 2003, only

16 22 percent of the accounts at more than

17 25 ounces?

18 A. And 150 per year.

19 Q. Oh, I was reading the wrong number.

20 A. So it's a lot easier to get a lot more

21 metal if you have bigger accounts. It

22 goes on and on and on.

23 Then you have timed out

24 accounts. Those accounts, as we said,

1 after two years if they haven't shipped,

2 it's not really an account, so you have

3 to focus your time as a salesperson on

4 going back after the big ones, not going

5 back after the little ones. That's what

6 that is telling you.

7 And then you have on page 21

8 Incremental and Existing Timed Out

9 Volume. It could be up, it could be

10 down. New Accounts, and then the Volume

11 from the New Accounts, and then you have

12 a total volume.

13 Then we go into the Sweeps,

14 80 percent of the lots, 26 percent of

15 the lots at ten ounces.

16 Q. This is page 24 you're looking at?

17 A. Yeah. We are trying to get it up. You

18 see how difficult it is to get it up to

19 25? You kind of have to show in a

20 bullion -- the same thing. So 82

21 percent of the sweep lots, 40 percent of

22 the volume at ten ounces. So it's kind

23 of like the old 80/20 rule, but you have

24 to spell it out. So then you get your

1 line, you get your --

2 Q. What page are you looking at now,

3 Mr. Curren?

4 A. 33. So you start at -- you base, then

5 you go below your base to 70 percent.

6 Let's say you lose 30 percent of your

7 business, you don't get any money. You

8 make your base, you make 10,000. You

9 grow the accounts with existing timed

10 out in \$3000 increments, 3000-ounce

11 increment, you get 20,000. And then

12 3000-ounce increments, new accounts and

13 accounts that are timed out come back,

14 10,000, so you have different ways to

15 make money.

16 Q. Who prepared this package, Mr. Curren?

17 A. Steve Doyle is the architect.

18 Q. Who put together this Power -- was it a

19 PowerPoint presentation at one point?

20 A. No.

21 Q. This package of documents marked as

22 Exhibit 20 was prepared by Steve Doyle?

23 A. Well, the person who actually did the

24 computer work was John Lees. Steve

1 Doyle is the architect and author.
 2 Q. By architect, you mean the person who
 3 created all these drafts?
 4 A. The concepts. It's one thing to have a
 5 concept, the other one is to put it into
 6 a computer. This looks like really
 7 something really you do, but every year
 8 it gets easier, but you can't buy the
 9 stuff off the shelf.
 10 Q. And so, Miss Bergevine, in some form or
 11 substance, was given something like this
 12 back in 2002?
 13 A. She got this back in 2002. And it's in
 14 the discovery, I saw it yesterday.
 15 Pretty much a precise one-page review of
 16 what her commissions would be, but this
 17 is the back and forth.
 18 Q. So you saw that in discovery from us or
 19 from Pease & Curren?
 20 A. We have copies of the discovery.
 21 Q. Right. I'm asking whether that document
 22 came from Miss Bergevine or from Pease &
 23 Curren.
 24 A. I don't know whether it came from

1 Miss Bergevine or Pease & Curren, but I
 2 did see it yesterday. If you want to
 3 pull it out, I can show it to you and
 4 explain it to you, or we can do it
 5 later, however you want to do it.
 6 Q. We will get to it. Earlier we were
 7 talking about the ledger cards. When's
 8 the last time you threw out or destroyed
 9 ledger cards?
 10 MR. ARONSON: Objection.
 11 A. We dispose of the ledger cards on an
 12 annual basis every three years.
 13 Q. In January? I'm sorry, what, every
 14 three years?
 15 A. Yeah.
 16 Q. I'm not sure I follow you. You're
 17 saying on an annual basis, then you're
 18 saying every three years. Is it
 19 January?
 20 A. Spring, spring cleaning.
 21 Q. So in what month would that be that it's
 22 done, in April, then?
 23 A. I'm not sure, April, May. Spring
 24 cleaning.

1 Q. You will throw out anything that is more
 2 than three years old?
 3 A. As far as customer things. The ledger
 4 cards, one of the administrative
 5 assistants will monitor them and go
 6 through them, and she will pull ledger
 7 cards that have no -- jobs haven't come
 8 in in two years, and then she will make
 9 a note to the salesperson if the
 10 customer is big enough and say, "I
 11 haven't seen anything." That goes to
 12 the sales manager and to the
 13 salesperson. "XYZ Company hasn't
 14 shipped in two years. You better put it
 15 on your win back list. You better" --
 16 and then ledger cards -- we don't now
 17 use it anymore because we're constantly
 18 going through the ledger cards to find
 19 ledger cards, and a lot of times we're
 20 going through fast because we have
 21 customers on the phone or people want
 22 information, and it's cumbersome, so we
 23 try to keep the ledger cards -- and I'm
 24 talking hundreds and hundreds of them,

1 but we don't want thousands of them.
 2 Q. So you say that the administrative
 3 assistants find the ones that are either
 4 two years old or --
 5 A. With no shipments, right, pulls them.
 6 Q. I'm asking you what is the procedure for
 7 throwing them away, as you just said?
 8 A. Incineration.
 9 Q. Okay. And what are the time limitations
 10 as to when you throw them away?
 11 A. Well, if we haven't had a shipment in
 12 two years, then we've declared them not
 13 a customer.
 14 Q. But you just said you will try to win
 15 them back.
 16 A. Yeah, I said that.
 17 Q. But you don't keep the ledger card to
 18 try to win them back?
 19 A. No, no, it goes in the computer, the
 20 salesmen's computer.
 21 Q. No shipment in two years --
 22 A. -- you don't need the ledger card.
 23 Q. You tell the sales manager, "Let's win
 24 them back"?

1 A. Yeah.
 2 Q. And you throw the ledger card away?
 3 A. And it's in the computer, the win back
 4 list.
 5 Q. And the ledger cards get thrown away?
 6 A. The ledger cards no longer have any
 7 value whatsoever because it's easier to
 8 write up another ledger card, it takes
 9 five minutes if they do come back. And
 10 plus the information, the contact
 11 information for who's making the
 12 refining decisions, probably Jake.
 13 Q. Because you haven't contacted them in
 14 two years?
 15 A. Well, maybe we have and we haven't
 16 gotten anything or maybe we haven't.
 17 Sometimes unfortunately, I hate to say
 18 it, we haven't contacted them but it's a
 19 sales function.
 20 Q. What about the -- do you have a distinct
 21 memory in the spring of this year
 22 throwing away, as you said, ledger cards
 23 in the spring of this year?
 24 A. Yeah, yeah.

1 Q. Okay. How many ledger cards were thrown
 2 away in the spring of this year?
 3 THE WITNESS: I know this
 4 doesn't register on the computer.
 5 Q. So you're indicating about --
 6 A. I'm going to say 50, I'm going to guess.
 7 MR. ARONSON: Don't guess. If
 8 you can give an estimate, do that.
 9 THE WITNESS: Can I estimate 50?
 10 MR. ARONSON: You can estimate
 11 whatever you think the figure is, but
 12 don't guess.
 13 THE WITNESS: I really don't
 14 know.
 15 Q. Who actually does that? You said you
 16 incinerate them?
 17 A. Yeah.
 18 Q. Okay. Who actually goes and incinerates
 19 them?
 20 A. Our plant manager.
 21 Q. The plant manager?
 22 A. Yeah.
 23 Q. What about the assay tickets, do you
 24 save the assay tickets?

1 A. Yes.
 2 Q. For how long do you save the assay
 3 tickets?
 4 A. Six months.
 5 Q. Have you thrown any assay tickets away
 6 since this lawsuit has started?
 7 A. Yeah.
 8 Q. When did you last throw away assay
 9 tickets?
 10 A. A month or two ago.
 11 Q. Did you have any discussions with
 12 Miss Curren that these might be of some
 13 use in the litigation?
 14 A. Miss Curren?
 15 Q. Yeah, your sister over there, did you
 16 have any discussions with her of how
 17 they may be of value in the litigation?
 18 A. No.
 19 Q. Did you have any discussions with anyone
 20 other than your lawyers whether or not
 21 these were of any significance in the
 22 litigation?
 23 A. I didn't have discussions with anybody
 24 about throwing away the assay tickets.

1 Q. Did you tell any of the employees not to
 2 throw them away because of the pending
 3 litigation?
 4 A. The assay tickets -- I incinerate them
 5 myself. I don't want to go find a bunch
 6 of assay tickets under a chair in the
 7 plant or the plant manager left them on
 8 his desk for two weeks, you know?
 9 Certain customer stuff -- I'm the
 10 customer guy. I used to be the sales
 11 manager. Certain things I go out in the
 12 plant and I do, and that is one of them.
 13 Q. So the plant manager doesn't incinerate
 14 the ledger cards -- excuse me, he does
 15 incinerate the ledger cards?
 16 A. Yeah. In this particular case I said,
 17 "Bring them." He had a drum full of
 18 material that was going to get
 19 incinerated, and he said, "We got ledger
 20 cards," and I said, "Put them in the
 21 drum."
 22 Q. But you say the assay cards you,
 23 yourself --
 24 A. The assay cards I, myself, incinerate.

1 Q. How often do you incinerate them?
 2 A. Every six months.
 3 Q. When was the last time you incinerated
 4 them?
 5 A. About a month and a half ago.
 6 Q. How many cards were incinerated a month
 7 and a half ago?
 8 A. I would say 300 to 600.
 9 Q. Any assay tickets left over from when
 10 Miss Bergevine worked there?
 11 A. No.
 12 Q. When would those have been incinerated?
 13 A. When she worked there.
 14 Q. Contemporaneously with when she worked
 15 there?
 16 A. Yeah.
 17 Q. Or within six months, I guess you're
 18 saying; you say you throw them out six
 19 months later?
 20 A. It's possible that when she left in June
 21 that the assay tickets went out at the
 22 end of the year or thereabouts. Could
 23 be a month either side. Maybe at the
 24 end of the year. If Jay was throwing

1 Q. There's no documents?
 2 A. There's no documents.
 3 Q. There's no documents relating to
 4 Miss Bergevine's employment?
 5 A. No.
 6 Q. Why is that?
 7 A. Because we don't keep documents that we
 8 don't need for more than two or three
 9 years. Basically sales related stuff.
 10 She quit, I hire new people. I have her
 11 file laying around. I get out her
 12 customers, I transition them to the new
 13 salespeople. I got new files. I got
 14 files on them. I got new commission
 15 structure. I got Trish's old commission
 16 structure. I got old stuff. It's been
 17 around for a while. What am I going to
 18 do with this?
 19 Q. But you have a computer system, so why
 20 can't you access the documents in the
 21 computer system and print them? The
 22 tracking system is in a computer;
 23 correct?
 24 A. The tracking system is in the computer.

1 them out, he might have been a little
 2 busy and not thrown them out until
 3 February. He may have thrown them out
 4 in December. I don't know exactly.
 5 Q. What about when Jay was doing the --
 6 writing up the ledger cards, was he in
 7 charge of throwing away the assay
 8 tickets, or was that still you?
 9 A. No, no. He used to throw them away.
 10 Q. And now that's your responsibility?
 11 A. Yeah.
 12 Q. What about the tracking system, have you
 13 taken any steps since Miss Curren's
 14 deposition to get a copy of the tracking
 15 system pertaining to Miss Bergevine's
 16 clients?
 17 A. Have I? No.
 18 Q. Do you know if anyone in the company has
 19 attempted to do that?
 20 A. No.
 21 Q. Do you have any intention of attempting
 22 to get those documents relating to
 23 Miss Bergevine?
 24 A. There's no documents.

1 Q. Yeah, so has anyone in the company made
 2 an effort to print out those documents
 3 related to Miss Bergevine's customers?
 4 A. No.
 5 Q. Do they exist?
 6 A. No.
 7 Q. Why don't they exist?
 8 A. Because I don't keep them around.
 9 Q. So are you testifying that somebody at
 10 the company deleted the tracking system
 11 relating to Miss Bergevine's customers?
 12 A. I certainly hope so.
 13 Q. Why is that?
 14 A. Because we got this computer system with
 15 8000 customers in it, and maybe 3000 of
 16 them are real customers, and I am
 17 constantly trying to get people to get
 18 all the stuff out of the computer, and
 19 there's kind of a -- for some reason
 20 salespeople think that they -- they're
 21 eternal optimists. "This guy is coming
 22 back. Don't throw his ledger card away.
 23 This guy is going to ship in the next
 24 month," even though he hasn't shipped in

1 for three years. You're fighting the
 2 eternal optimism of a sales force, and
 3 it has to be disciplined, and somebody
 4 has to drive the ship, and somebody has
 5 to say, "These things are going out.
 6 Work on these things. This is where the
 7 money is."
 8 Q. What about the settlement reports, are
 9 the settlement reports saved in the
 10 computer system?
 11 A. No. The settlement -- well, I say
 12 that. I don't know if they are, but I
 13 will tell you about the settlement
 14 reports, if you want to hear about them.
 15 Q. No, no, I didn't ask you that?
 16 A. No, you asked me a question and I'm
 17 going to answer it.
 18 Q. You answer it, you said, "No." So my
 19 next question to you is are there
 20 physical copies of the settlement
 21 reports preserved at the office?
 22 A. That's a very good question, Gregory.
 23 I will now proceed to answer that
 24 question. The settlement documents are

1 something that the customer is dying to
 2 get ahold of. They sent this stuff in.
 3 It's worth money. It's like Christmas.
 4 "When is Santa Claus coming? I need my
 5 settlement. I want to pay my taxes. I
 6 want to go on vacation. I want to buy
 7 my wife a ring. I need the money to put
 8 in my business." They want their
 9 settlements. The salespeople, they want
 10 their settlements. "Where's my
 11 settlement? I don't want it a day
 12 late." So the settlement -- physical
 13 cards go to the salespeople, believe me,
 14 and they're looking for them all the
 15 time, and they go to the customers.
 16 Every day we mail them to the customers.
 17 Q. You're talking about the ledger cards.
 18 A. No, I'm talking about the settlement
 19 reports.
 20 Q. I'm talking about the settlement
 21 reports.
 22 A. The settlement reports. They go to the
 23 salespeople, they go to the customers.
 24 Q. Right.

1 A. Then they go in a file.
 2 Q. At Pease & Curren?
 3 A. At Pease & Curren.
 4 Q. Who maintains that file?
 5 A. The administrative assistants.
 6 Q. Who are they that are in charge of this,
 7 all of them are or --
 8 A. They're all jointly in charge of it, and
 9 they all have access to it.
 10 Q. How about in 2002, who was in charge of
 11 the settlement reports at Pease &
 12 Curren, maintaining them?
 13 A. The whole crew was in charge of it.
 14 It's kind of a trade-off type of thing.
 15 Q. What's the trade-off?
 16 A. Filing.
 17 Q. What are they getting in return?
 18 A. They don't fight to file the way the
 19 salesmen fight to get the settlements.
 20 Q. So for how long are those settlement
 21 reports preserved?
 22 A. Settlement reports are preserved for
 23 three years.
 24 Q. At the end of three years, what happens

1 to the settlement reports?
 2 A. Incineration.
 3 Q. Are any of these settlement reports
 4 relating to Miss Bergevine's clients
 5 available at Pease & Curren?
 6 A. No.
 7 Q. Did you have any discussions -- since
 8 this lawsuit has been filed, have you
 9 disposed of any settlement reports from
 10 2002 and 2001?
 11 A. No, they're already gone.
 12 Q. They were already gone before the
 13 lawsuit started?
 14 A. Yeah, to the best of my knowledge.
 15 Q. The lawsuit was filed in 2005. The
 16 settlement reports would have been from
 17 2002, so that wouldn't have been three
 18 years.
 19 A. Well, it's possible that some of them
 20 were still around. I'm not sure.
 21 There's none around now.
 22 Q. That was my next question. You're
 23 certain that none are around today?
 24 A. I wish they were around. If I had known

1 we were going to go through all this --
 2 I don't know what to call it.
 3 Q. What you're saying, Mr. Curren, as
 4 you're going through this exercise,
 5 is you have no way of calculating
 6 the amounts of precious metal that
 7 Miss Bergevine's clients sent to Pease &
 8 Curren from 1996 to 2002?
 9 A. I didn't say that. I can do that.
 10 Q. How would you be able to do that?
 11 A. If you went to Kip Curren, Sam Spade, to
 12 go after this problem and solve it? I
 13 would bring Trish in and say, "Trish,
 14 sit down. Give me your tax returns.
 15 You know what you made in those years.
 16 I know you know what you made because
 17 you recite it in the deposition, so
 18 write it all down. Let's back it all
 19 up. Let's figure out how many jobs came
 20 in. You got 50 for these, you got so
 21 much for those. Let's come up with some
 22 sort of figure that we can all agree
 23 on." It might not be exact, might not
 24 be as good as having the settlement

1 reports, which I regret we don't have,
 2 but I think we can come up with a pretty
 3 reasonable number because she got paid.
 4 She knows what she got paid. She has
 5 tax returns. We know what the
 6 commission structures were, and I don't
 7 think we are that far out of the ball-
 8 park as far as having the information we
 9 need to meet your needs in determining
 10 what sort of volume she provided Pease &
 11 Curren.
 12 Q. Well, assuming what Miss Bergevine says
 13 is accurate -- and this is just an
 14 assumption -- which is that her
 15 commission should have been based on
 16 what's in the tracking system as opposed
 17 to what is in the settlement reports,
 18 how could she possibly calculate that or
 19 how could you calculate that without the
 20 tracking system documents?
 21 A. Well, you couldn't do it, do any -- I
 22 mean, accurately, but you could come up
 23 with some sort of -- you could certainly
 24 rule out some numbers. You could come

1 up with some top end number.
 2 Q. Can you describe for me how that would
 3 be done with any degree of accuracy?
 4 A. Well, she got \$50 for new jobs and \$25
 5 for some. We'd sit down and we'd say,
 6 "Trish, usually you had so much, you had
 7 12 jobs, some months you had 17 jobs,
 8 some months you had 20 jobs. Let's do
 9 that," and we'd get out -- like the
 10 price of palladium spiked, it went up
 11 the roof to a thousand bucks. She's got
 12 60 jobs for a few months, we all know
 13 that. And then palladium came flying --
 14 tumbling down on the other side and
 15 business fell off. Now she's got six
 16 jobs, eight jobs, 12 jobs. You know, we
 17 try to recreate it the best you could.
 18 That's what I would do.
 19 Q. Mr. Curren, did you create the document
 20 that is marked as Exhibit 1 to your
 21 deposition?
 22 A. No.
 23 Q. Who created that document?
 24 A. Trish.

1 Q. When did she create it?
 2 A. A couple of years after she started
 3 working.
 4 Q. This document was used exclusively for
 5 the dental industry; correct?
 6 A. No.
 7 Q. Well, it does say at the top Dental
 8 Industry Refining; correct?
 9 A. Yeah.
 10 Q. And you just said that Trish created it?
 11 A. Yeah.
 12 Q. The only thing she worked on was the
 13 dental industry; correct?
 14 A. True.
 15 Q. So this document was solely for the
 16 dental industry clients; correct?
 17 A. No.
 18 Q. Who else was it used for?
 19 A. Nobody.
 20 Q. It wasn't even used for the dental
 21 industry?
 22 A. No.
 23 MR. ARONSON: Can we go off the
 24 record a minute?

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1 MR. ACETO: Sure.
2 (Whereupon there is a brief
3 discussion off the record.)
4 Q. Let's go to the category of General,
5 Mr. Curren. This language here I see is
6 in that document that was just handed to
7 me by your counsel, correct, the
8 language under General?
9 A. I don't know. I would have to look at
10 the document.
11 Q. So while we are on the record on this,
12 then, are you saying that this document
13 was never used to solicit clients for
14 Pease & Curren in this form in
15 Exhibit 1?
16 A. That is what I am saying.
17 Q. Why was it that it was never used?
18 A. We don't compete on price. It sets
19 prices on it.
20 Q. Under the Refining Terms?
21 A. Yeah.
22 Q. What is it that you mean you don't
23 compete on prices?
24 A. What happens, Greg, if you use a

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1 document like this, it blows up in your
2 face because you say gold, 96, and then
3 your competitor walks in and they say,
4 "Oh, Pease & Curren, 96," and the
5 competitor says, "97, I will pay you
6 97." Then you go in someplace else and
7 you say, "Palladium, platinum, 90
8 percent," and then the next guy walks in
9 and goes, "Oh, no, we pay 91 percent,"
10 so it's very counterproductive to use a
11 document like this in marketing, so
12 therefore we don't use it, and I think
13 at the time Trish didn't understand
14 that. She was trying to inform the
15 customer. Of course, at that time she
16 was trying to really promote the
17 company. Trish was a great promoter,
18 that was her strong point was promoting
19 Pease & Curren. I think she enjoyed
20 doing it, and she was good at it, and
21 she wanted to have some literature to
22 pass out at shows, and she wanted stuff
23 to mail, and she would like do
24 handwritten cards and stuff. But on

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1 this particular thing I had to explain
2 to her, "Trish, how are you going to do
3 this? It's a little contest with your
4 competition over percentages, it's not
5 productive."
6 Q. So the customer is going to use this as
7 a stocking horse, basically, to try to
8 get a better rate?
9 A. No. Well, that's part of it, and the
10 competition is going to turn the focus
11 on price. You don't want to turn the
12 focus on price, you want to turn the
13 focus on reputation and payment and
14 integrity and service and, you know --
15 price is --
16 Q. This document that you say
17 Miss Bergevine created, how far along
18 in the process did it go? Was it
19 printed by a stationery company?
20 A. I don't know.
21 Q. Was it handed out to any clients, as far
22 as you know, or potential clients?
23 A. She might have handed it out, but I
24 don't think she did. I think she

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1 understood exactly what I wanted to say.
2 Does that one have Kevin Dillon at the
3 bottom? I think she had a falling out
4 with Kevin Dillon at some point. Kevin
5 Dillon's on here? Yeah, all right, it's
6 on both of them. Yeah, I mean, that's
7 the story.
8 Q. This document that is marked as Exhibit
9 No. 1 was created in a final format on
10 this stationery that this document is
11 printed on as well; correct?
12 A. This thing?
13 Q. Yeah.
14 A. You know, Greg, I couldn't tell you
15 whether one was printed or 15 were
16 printed. I couldn't tell you if Trish
17 had some at home and Trish sent them to
18 customers, but I can tell you I told her
19 not to, I can tell you I replaced it,
20 and I can tell you when I got done
21 talking to her, I think she understood
22 pretty much that "We're not competing on
23 price. That's not going to help you,"
24 so --

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1 Q. So who prints these out for you guys,
2 for Pease & Curren; do you do it
3 in-house?
4 A. No. I mean, a printing company. We
5 have a couple of little printing
6 companies we use around town.
7 Q. And would Trish have sent out a
8 marketing brochure like this without
9 your approval to a printing company to
10 be printed?
11 A. Trish, if -- yeah, she might have. She
12 would send out -- she would write
13 letters and sign her name on them and
14 mail them, and she would do -- create
15 different marketing from her house
16 sometimes that would not be the same,
17 that I would have to say, "Don't do
18 that."
19 MR. ACETO: Can we mark this as
20 the next exhibit, please?
21 (Exhibit 21, Printed document
22 entitled Dental Industry Refining, so
23 marked.)
24 Q. On to the General section, Mr. Curren,

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1 the second paragraph says, "You get a
2 high return if Pease & Curren gives
3 you a dealing directly with a refiner.
4 There is no middleman." That's not
5 actually an accurate statement, is it?
6 A. No, it's very accurate.
7 Q. These documents were sent -- this is
8 used as marketing material in the dental
9 industry; correct?
10 A. Yes.
11 Q. And you testified earlier that you don't
12 do refining for the dental industry;
13 correct?
14 A. Yes.
15 Q. So that statement that says you are
16 dealing directly with a refiner, there's
17 no middleman is not true?
18 A. No, I think you have to understand that
19 we process the material. We spend a lot
20 of money and time processing material.
21 Q. What do you mean by that, that you
22 process the material?
23 A. I know you don't want to go back into
24 this, but --

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1 Q. Generally.
2 A. We sample it, we sample the material at
3 great expense. We receive it, we put it
4 in the computer, we categorize it, we do
5 tests on it. You can't say we don't
6 process this stuff. We don't refine the
7 stuff, but we process the material, so
8 therefore we are not a middleman.
9 Q. But you are sending it to a refinery to
10 be refined.
11 A. We are sending it to a refinery to be
12 refined, yes.
13 Q. And the next paragraph says, "The
14 company performs three fire assays on
15 each of the lots to insure the highest
16 return on your dental scrap." Did you
17 make a decision to put that sentence in
18 this brochure?
19 A. I approved of this. Trish liked the
20 three fire assays. We performed three
21 fire assays, and the middleman performs
22 no assays whatsoever. The middleman is
23 a buyer. I had a company that I spoke
24 with yesterday called The Jewelers of

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1 Las Vegas. The Jewelers of Las Vegas --
2 the owner was very friendly with the
3 middleman, really nice guy, came around
4 every month, every two months with a
5 fistful of cash and pay him \$1800 for
6 his keg full of sweeps and polishings.
7 He sent the keg to us and we paid him
8 \$9000. The guy called me up, he was
9 like, "How can this possibly be?" I
10 said to the guy, "He's a middleman.
11 He's a buyer. He's paying you cash.
12 You get your cash in one day. You want
13 to wait a little bit, you can make more
14 money." But he's taking it, he's
15 combining it with other things, he's
16 picking up at other places, and then
17 he's sending it into a refinery, so that
18 is what a middleman is.
19 Q. I'm now focusing you on the third
20 paragraph now.
21 A. The three fire assays?
22 Q. Right. Why was that significant that
23 you wanted to put it into this
24 literature?

1 MR. ARONSON: Objection. Go
2 ahead and answer.
3 A. We spent a lot of money, Greg, on our
4 laboratory. We're very proud of our
5 laboratory, and we have a laboratory and
6 the middleman doesn't, and we want to
7 differentiate ourselves.
8 Q. Don't you want to tell the customer that
9 you're going to give him the most
10 accurate read of what the content of the
11 precious metals are in his lot?
12 A. What I was saying before you interrupted
13 me is we want to differentiate ourselves
14 from the middleman and buyers and people
15 who do not assay, people who just
16 estimate. They estimate what's in --
17 because they have no choice, because
18 they have no facilities. We do have
19 these facilities, and we spent a lot of
20 money on these facilities so that we can
21 perform these tests, and that we can pay
22 people a lot more money because our
23 estimates are much better than somebody
24 else's estimates because we do have this

1 gold. Gold has an allure to it. They
2 like their gold. They like to talk
3 about their gold. They like to think
4 about their gold going to the London
5 Mercantile Exchange. They like to
6 sometimes have their gold returned in
7 coins so they can put it in a safe
8 deposit box. They like to show the
9 coins to their friends when they go to
10 shows. I mean, people like that. So we
11 put it in, they like it, they want to be
12 players, let them be players.
13 Q. Are you also telling the customers,
14 though, that fire assay is an accurate
15 method because it's accepted by the
16 London Metal Exchange and the New York
17 Mercantile Exchange? Isn't that what
18 you're also telling them?
19 A. Well, it is accepted. It's the only one
20 accepted.
21 Q. I'm not disputing that with you. I'm
22 asking if one of reasons you put that
23 sentence in Exhibit 21 is to convey to
24 the customer this is an accepted,

1 laboratory, and we do perform these
2 tests, and that's something that we want
3 our customers to know and as a
4 salesperson Trish wanted her customers
5 to know.
6 Q. How about the next sentence, Mr. Curren,
7 it says, "Fire assay is the only method
8 accepted by the London Metal Exchange
9 and the New York Mercantile Exchange.
10 What was the reason, the significance
11 that you wanted to include this in this
12 marketing brochure, Exhibit No. 21?
13 A. Well, a lot of these guys want to be
14 players.
15 Q. What guys?
16 A. The gold guys, the dental lab guys.
17 Secretly, underneath their dental lab
18 desk where they're making teeth, and
19 where they're making things for
20 dentists, and where they're making
21 things for dentists' customers, and
22 they're producing this, secretly they
23 want to be gold traders. They want to
24 be players. They want to be involved in

1 accurate method of estimating, as you
2 just said, estimating the amount of
3 precious metals in a particular scrap?
4 A. I think it's important to understand
5 that the London Metal Exchange deals in
6 pure bullion, so they randomly inspect
7 pure bullion from bullion dealers, and
8 they use fire assay instead of like a
9 spectrometer or some instruments or
10 something like that; that is what they
11 use.
12 Q. So back to my question, though,
13 Mr. Curren, isn't the other reason or
14 one of the reasons why you put this
15 statement in here is to tell the
16 customer that this is an accurate method
17 of estimating the amount of precious
18 metals?
19 A. It is accurate if it's precious metals,
20 pure precious metals. That is what it
21 says, pure precious metals. It doesn't
22 say an accurate method for dental scrap
23 received in Pease & Curren. We're not
24 trying to mislead our people.

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1 Q. Are you saying if someone brought you a
2 shipment of pure gold, I guess, that you
3 could do a fire assay and it would
4 accurately tell you the exact amount of
5 that gold?
6 A. No.
7 Q. Can you explain to me what you mean by
8 that?
9 A. I can't. Let me tell you why. Accuracy
10 is relative in chemistry. In chemistry
11 you have to be able to reproduce
12 results. That's the gold standard of
13 chemistry, that's the test that passes.
14 Reproduce results. In assaying fine
15 gold, you're going to find you cannot
16 reproduce the results unless you have
17 the same gold from the same source in
18 the same muffle furnace at the same
19 muffle temperature at the same draft at
20 the same time; otherwise, you can't
21 reproduce this, and people think -- and
22 you may think, "Oh, let's do an assay.
23 Oh, the assay is" -- you know, but in
24 reality the assay is a test, and it's an

1 and I would run it several times and see
2 what the variations are, and then I
3 would take it and I would dissolve it,
4 and I would try to find the impurities
5 and make sure -- because there's always
6 something. And now I may come back and
7 say, "Well, the impurity is silver, the
8 pair's copper, and guarantee there's no
9 chromium into this." But each time you
10 go into a muffle furnace and you don't
11 correct the assay, there's always less
12 gold. When you heat it up, something
13 vaporizes. It's a fact of life.
14 Q. Do you have the facilities to do what
15 you just described, using a muffle
16 furnace?
17 A. I have a muffle furnace.
18 Q. So you would use an assay test, a fire
19 assay test to do the procedure you just
20 described?
21 A. If I had to do it, I would -- as I said,
22 I would do several, and I would do
23 side-by-side with a known amount to see
24 what the losses were, and then I would

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1 excellent test, but when you want to
2 talk about accuracy, that's okay if
3 you're talking about weighing potatoes.
4 Was the scale accurate when we put the
5 potato on? When we're talking about
6 chemistry, we're talking about
7 reproducing results. So let's say you
8 came to me and you said, "Kip, here's
9 this bar of gold. I want you to
10 tell" -- "I own an electronic company,
11 Kip." Right?
12 Q. Right.
13 A. "I'm going to use this gold. It's going
14 to go into a jet airplane. Somebody's
15 life is going to depend upon this gold.
16 It has to be pure. It can't have any
17 chromium in it, it can't have anything
18 that oxidize it. It's going in a jet
19 airplane. Somebody could die if we
20 screw this up. So I've this gold." So
21 I would take that gold, and then I would
22 take some other gold, and then I would
23 take another piece of that gold, and
24 then I would put it in a muffle furnace

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1 dissolve it in acid and then fine out --
2 try to precipitate the impurity to
3 guarantee you, for instance,
4 hypothetically, that there would be no
5 chromium in this that could oxidize the
6 application that you're using. Gold --
7 you haven't seen gold that is, like,
8 almost pure. Instead of rolling it out,
9 it's got, like, just a few parts per
10 million -- just a little bit of zinc in
11 it or iridium or platinum. Instead of
12 rolling out smooth, it rolls out like
13 this. You look at it, you think it's
14 pure, and it tests pure, and all of a
15 sudden you go to roll it out and it
16 doesn't have the same characteristics
17 that pure gold does, so close with gold
18 doesn't really cut it, you --
19 Q. So earlier we were talking, Mr. Curren,
20 about the process from the assay ticket
21 to you writing down the numbers on the
22 ledger card to the settlement report
23 being sent to the customer. Have you
24 ever referred to that whole process as

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1 the settlement process?
2 A. It is a settlement process, yeah.
3 Q. Is that how you refer to it in the
4 company, as the settlement process?
5 A. I can refer to it as paying the customer
6 if I want. I mean --
7 Q. My question is do you refer to it as the
8 settlement process?
9 A. No, I don't.
10 Q. Have you heard people in the office
11 refer to it as the settlement process?
12 A. Oh, yeah, yeah.
13 Q. And is that in reference to -- as you
14 put it before -- your job, which is to
15 write down these ledger cards? Is that
16 your understanding of the settlement
17 process, you're writing down these
18 numbers on a ledger card that ultimately
19 will be transferred to the settlement
20 report?
21 A. Yes.
22 Q. And so do you make -- have you heard of
23 the term recoverability adjustment?
24 A. Yes.

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1 Q. When someone says that you made
2 recoverability adjustments, what does
3 that mean to you?
4 A. Well, you have to -- if you're going to
5 be in the gold business, whether you're
6 a buyer or refiner, you have to know
7 what you're going to recover or you have
8 to have some idea of what you're going
9 to recover. You have to have some --
10 have to know how it works. So you can't
11 recover everything, unfortunately. Some
12 things you can't recover.
13 Q. We've talked about that before. So is
14 that what you're referring to, the
15 things you testified before, in terms of
16 what you consider the recoverability
17 adjustment? You were talking about
18 platinum, that if there's a low level of
19 platinum, it couldn't be recovered and
20 things of that nature. Do you recall
21 that?
22 A. Yeah, I recall that.
23 Q. Is that what you are referring to now,
24 the recoverability adjustment?

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1 A. No, no. There's a lot of factors that
2 go into determining how you pay a
3 customer and how you settle for a
4 customer.
5 Q. What are those factors?
6 A. Greg, let me finish the answers.
7 Q. I'm trying to focus you so we can get
8 out of here quicker. Really, if you
9 answer my questions, we can be out of
10 here a lot quicker.
11 What are those factors that you
12 consider in the recoverability process?
13 A. See, this is what I don't do when I do
14 it. I don't rush it. I take my time,
15 and I really look at it closely;
16 otherwise, you make mistakes.
17 Let's say I have an assay
18 ticket, and let's say I have an amount
19 of silver. Now I say, "There's the
20 amount of silver. Is that silver real?"
21 And then I say -- I look at the ticket
22 and I say, "Oh, when we took the button,
23 before we melted the button, we added
24 silver to the button," because otherwise

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1 the ratios weren't right and the button
2 won't pop, so we have to add silver to
3 it. So that silver, that's our silver,
4 that's not the customer's silver. We
5 can't pay him for that.
6 Q. How do you know that there wasn't some
7 presence of silver in there before you
8 added the silver?
9 A. Well, you look at the ticket.
10 Q. But you're saying to disregard the
11 ticket because you added silver.
12 A. Well, we know how much silver we added,
13 so we have to deduct it. We don't
14 always assay for silver. Sometimes we
15 deduct for silver to pay.
16 Q. So you keep track of the amount of
17 silver that you add to a specific lot,
18 and you will back it out when you get
19 the assay information?
20 A. Yeah.
21 Q. Okay.
22 A. Very important.
23 Q. Go ahead.
24 A. And the dental lots -- which I know

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1 you're very interested in -- specific to
2 dental lots is lead retention. If you
3 have lead retention -- and the lead
4 shows up as silver when you do the
5 deductions. The lead also shows up as
6 platinum and palladium, and in certain
7 cases gold. You can't pay for lead.
8 Q. And you say it's specific to the dental
9 industry. Why is that?
10 A. Because as we talked about at the
11 beginning, the contamination issue of
12 platinum and palladium, and also the
13 melting points of platinum and
14 palladium. Just so you can understand,
15 this is a common occurrence at Pease &
16 Curren. We have a jeweler, and he sends
17 us a platinum ring. He says, "Here's my
18 platinum ring," and we take the platinum
19 ring, and we look at it. It's not
20 platinum, it's white gold. There's no
21 platinum in it at all. It's zinc, but
22 the jeweler doesn't know that. I mean,
23 some jewelers do, but some don't.
24 Q. Right.

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1 A. So if you take a platinum ring, we bring
2 it into the lab and we fire up a torch
3 to, like, 1700 degrees F. We stick it
4 under there, the thing turns yellow and
5 it stays in one piece, and we know it's
6 platinum. We take the other one in
7 there, put it under a torch and it melts
8 like butter, we know it's not. So the
9 characteristics of the dental scrap make
10 it very difficult to get a homogeneous
11 mix, so you assume you're not going to
12 get a homogeneous mix, and that has to
13 be considered in your settlement.
14 Q. Did you say earlier that actual lead
15 will come up as silver in assay; is that
16 what you're saying?
17 A. Yes.
18 Q. Is that called lead retention, or is
19 that a different process?
20 A. That's lead retention.
21 Q. Is lead retention part of your analysis
22 when you do the settlement process?
23 A. It has to be.
24 Q. And why is that?

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1 A. Otherwise we're paying for silver that
2 doesn't exist, or we're paying for
3 platinum or palladium prices when we
4 only should be paying silver prices.
5 Q. I thought you said lead retention is
6 different than lead registering as
7 silver in a fire assay, or is that the
8 same thing?
9 A. The same thing.
10 Q. The same thing. And deleterious metals,
11 do you know what that means?
12 A. Yeah.
13 Q. Is that part of your settlement process?
14 A. Yes.
15 Q. What is that, sir?
16 A. Well, let's say -- we'll go back to the
17 i-u-ms again, okay? Iridium. If you
18 had material with iridium in it -- our
19 process can't tell between iridium and
20 platinum and palladium, so you have to
21 back out the iridium or ruthenium or
22 chromium.
23 Q. Are those considered precious metals
24 that you're listing?

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1 A. Well, iridium and ruthenium are,
2 chromium is not, but chromium can show
3 up as gold.
4 Q. How do you know to back those out,
5 Mr. Curren?
6 A. From the notes on the assay ticket.
7 Q. What specific note would lead you to
8 believe that there was some
9 concentration of deleterious metals in a
10 particular lot?
11 A. This lot looks like it has 10 percent
12 chromium.
13 Q. Who would write that, Miss Michalik?
14 A. Sometimes, sometimes the plant manager.
15 This lot only melted, it turned purple
16 and smoked. I think it has aluminum,
17 another i-u-m, in it. These guys --
18 it's a religious experience for them
19 because --
20 Q. What guys?
21 A. The guys in the plant writing things
22 down, information. It's a religious
23 experience because after you get burnt
24 -- when I say burnt, I mean financially

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1 burnt -- you pay somebody for aluminum,
 2 for gold when it's aluminum, you try not
 3 to do that too often.
 4 Q. How do you figure that out when it's all
 5 bundled together in one massive lot that
 6 is sent out to a refiner? How do you
 7 know that you got burnt on a particular
 8 job?
 9 A. Because aluminum has certain
 10 characteristics when you melt it. It
 11 sparkles, so if somebody is looking at
 12 it when it's melted and they see it
 13 sparkle, then they tell us.
 14 Q. When you send it to a refiner, they will
 15 tell you?
 16 A. No, no, no, when melting.
 17 Q. You melt it on site?
 18 A. Yeah.
 19 Q. So after you pay the customer, you melt
 20 that particular lot. If it sparkles --
 21 A. No, no, before we pay the customer.
 22 Q. That's part of the assay process; is
 23 that right?
 24 A. I think -- you have to -- for the

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1 purposes of a refinery, you have to
 2 consider the sampling process and the
 3 assaying process as one continuous
 4 process. You seem to want to separate
 5 them, and that's natural, you don't work
 6 in a refinery. But you try to separate
 7 them too much --
 8 Q. Right.
 9 A. -- whereas I'm -- it's not like I baked
 10 a cake and then I put the frosting on
 11 it.
 12 Q. Describe for me the process so that I
 13 understand it, then.
 14 A. Sampling process?
 15 Q. Yeah. Well, you were just saying that I
 16 want to combine these two things, the
 17 assaying and the sampling process.
 18 A. In your mind, the sampling process and
 19 the assaying process are all tied
 20 together as one process in order to come
 21 up with the settlement, so you're asking
 22 me about the settlement, and then you're
 23 segregating, "How about the assay. How
 24 about the sampling?" Even though we've

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1 done the assay, the sampling process may
 2 tell us what we need to know in order to
 3 effectuate -- excuse me -- in order to
 4 accurately settle with the customer.
 5 The knowledge that we get may not come
 6 out of the assay lab; it may come, and
 7 very often does, come out of the
 8 sampling process because the certain
 9 visual things and certain
 10 characteristics that certain metals have
 11 that are very visible during the
 12 sampling process. You need to know
 13 that.
 14 Q. I don't know if you defined this before,
 15 but what is the sampling process that
 16 you're referring to now?
 17 A. Well, for dental scrap it's primarily
 18 incineration and melting.
 19 Q. And that is done after the assaying?
 20 A. No, it's done before the assaying.
 21 Q. It's done before the assaying?
 22 A. Yeah.
 23 Q. That way you made it homogeneous at that
 24 point; is that right?

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1 A. At that point we attempted to make it
 2 homogeneous, and it's homogeneous as we
 3 can within our capabilities.
 4 Q. Mr. Curren, let me turn your attention
 5 to Exhibit No. 3, sir.
 6 A. Okay.
 7 Q. Have you ever seen this document prior
 8 to today?
 9 A. Yes.
 10 Q. Did you, in fact, create this document
 11 as part of your marketing
 12 responsibilities?
 13 A. No.
 14 Q. Do you know who did?
 15 A. Yup.
 16 Q. Who's that?
 17 A. Bruce Gladstone.
 18 Q. Did you have any input in the language
 19 that went into this document, Exhibit
 20 No. 3?
 21 A. I did not.
 22 Q. Let's turn to page 2, paragraph 6. Do
 23 you know what Mr. Gladstone was
 24 referring to when he wrote "commercial

1 tolerances and custom and usage?"
 2 A. Yes.
 3 MR. ARONSON: Let me object and
 4 instruct the witness not to answer to
 5 the extent that you have to rely upon
 6 communications with counsel, including
 7 Mr. Gladstone, to answer that question.
 8 Q. Let me rephrase that for you, Mr.
 9 Curren. Do you know what that is in
 10 reference to?
 11 A. Commercial --
 12 MR. ARONSON: Same instruction.
 13 MR. ACETO: If he told him what
 14 that means, it's not attorney-client
 15 privilege.
 16 A. Commercial tolerance?
 17 Q. Yes.
 18 A. That's what you're interested in hearing
 19 about?
 20 Q. Yes. What's the meaning of commercial
 21 tolerance and custom and usage based on
 22 your understanding of those terms in
 23 your industry?
 24 A. Okay. In my industry what we do is we

1 do what is called commercial assay, and
 2 what we also perform is what we call a
 3 commercial sampling procedure. Not
 4 perfect. It's a good indication. It's
 5 better than an estimate. It's better
 6 than a buyer. So a commercial sampling
 7 -- I'm going to give you an example.
 8 For our dental sweeps, which are an
 9 important part of our business and an
 10 important part of Trish's business, we
 11 have 40-mesh screens in our sifters. So
 12 picture big incinerators -- maybe you
 13 could fit four or five of them in this
 14 room -- and you would take the dental
 15 scrap, and you would shovel the dental
 16 scrap into the incinerator, you would
 17 incinerate it, you would pull it out,
 18 and you would wait for it to cool off.
 19 Then you would take the material and you
 20 would put it in a ball mill. Are you
 21 familiar with what a ball mill is?
 22 Q. Yes.
 23 A. It's a pulverizer. And you would
 24 pulverize this material until you get it

1 to the point where it would fit through
 2 a 40-mesh screen. And then you would
 3 have the undersize and the oversize --
 4 that's a commercial sampling. It's
 5 very good for our purposes.
 6 Now, if we're a pharmaceutical
 7 company or Rand Refinery, and there was
 8 billions and billions of dollars at
 9 stake or maybe even several million
 10 dollars, they would say, "That's not
 11 good enough for us. We're not using
 12 this 40-mesh screen. We're using
 13 220-mesh screen." Now if you take the
 14 40-mesh -- what went through the 40-mesh
 15 screen, what you have is it looks like
 16 dirt, and it looks like it's perfectly
 17 sifted until you take it and you put it
 18 under a microscope and you start
 19 measuring the microns, and you find out
 20 quite often what you have is the
 21 equivalent of basketballs and marbles.
 22 Now you can take basketballs and
 23 marbles, and you can mix them in a mixer
 24 till the cows come home, and you're

1 never going to get a homogeneous sample.
 2 So somebody who's doing a non-commercial
 3 sampling would take the material -- they
 4 wouldn't use a ball mill, they would use
 5 a much different pulverizer and they
 6 would also do it at different
 7 temperatures, and they would probably
 8 first do -- get it through a 120-mesh
 9 screen, and then they would go through
 10 the whole process again, and depending
 11 upon the tensile strength of the
 12 material, and then they would get it
 13 down to a 2000 -- 220-mesh screen, and
 14 then they would submit it for assay if
 15 that was a pharmaceutical company or a
 16 large mining company. Same thing goes
 17 for the assay part. When you say
 18 commercial tolerances, you would talk
 19 about a commercial assay. If you're
 20 Rand Refinery or Pfizer, you can't have
 21 any discrepancies. You have to be able
 22 to replicate -- what we talked about,
 23 replicate with the chemistry, so you
 24 have to physically recover every metal

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1 in the material, quite often by
2 dissolving it and redissolving it and
3 precipitating and getting actually
4 recoverable amounts that you can dry and
5 quantify. So you have to have a
6 quantitative analysis performed on there,
7 so it would not be called a commercial
8 assay at that point. It would be much
9 more sophisticated.

10 Q. Is it your understanding of the use of
11 the term commercial tolerances in this
12 Exhibit 3 is a reference to the degree
13 of accuracy that you're providing to
14 your customers when you assess the
15 amount of precious metals?

16 A. Yes.

17 Q. Do you use this document, Exhibit No. 3,
18 when new customers come in?

19 A. Every time somebody ships -- not every
20 time. Any substantial new customer,
21 substantial new customer who ships
22 something in gets one of these. Now
23 they don't all sign them and send them
24 back, they just put them in their file,

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1 but I want them to know about it.

2 Q. Was this document in effect at the time
3 that Miss Bergevine worked at Pease &
4 Curren?

5 A. Some of the document was in effect.

6 Q. I notice on page 2 it's dated 2004,
7 Mr. Curren, so do you know whether
8 Mr. Gladstone created it after she
9 left, or was it a document that was
10 used when she was there?

11 A. This was afterwards, this document.

12 Q. Okay. We can turn to Exhibit No. 4.
13 Take a look at Exhibit No. 4. Are you
14 familiar with Miss Thomasen?

15 A. No.

16 Q. Are you familiar with the fact that
17 Mr. Pease had to send this letter out to
18 Miss Thomasen?

19 A. No.

20 Q. If you look at Exhibit No. 5, you see
21 the body of the letter is pretty much
22 identical to Exhibit No. 4; is that
23 right?

24 A. Yeah.

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1 Q. Was there a form letter in 2002 that you
2 sent out to customers -- by you, I mean
3 Pease & Curren -- sent out to customers
4 in response to an inquiry as to the
5 accuracy as to assay report -- not,
6 assay, accuracy of a particular
7 settlement report?

8 A. No.

9 Q. There wasn't a form letter?

10 A. No, no. Jay -- I have to assume Jay
11 spoke to both of these customers, and
12 then after he spoke with them, he sent
13 them a letter confirming that their
14 assays were -- excuse me -- the
15 recoverable amount of gold that they got
16 was accurate, and that they could put it
17 in their file and show it to their boss
18 or their wife, depends how big the
19 company was.

20 Q. But you didn't have a form letter at
21 Pease & Curren that was used to send to
22 clients?

23 A. No.

24 Q. Do you have one today that you use?

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1 A. We don't have any letter now.

2 Q. Is it your responsibility to send out
3 something in sum or substance similar to
4 Exhibit No. 5 now that you have taken
5 over the settlement function?

6 A. Customer inquiries come to me.

7 Q. So it's your responsibility now as
8 opposed to Jay Pease back when he was
9 with the company?

10 A. Correct.

11 Q. Exhibit No. 6. No. 6 was a document
12 that was produced by you or by your
13 office. I'm assuming this is a Web site
14 that Pease & Curren has implemented?

15 A. This is a Web site, yeah.

16 Q. When did you put up this particular
17 material on the Web site; do you know?

18 A. No.

19 Q. Is that part of your responsibilities of
20 marketing that you do the Web site, or
21 did you hire an outside source to do
22 that?

23 A. I hired an outside source.

24 Q. Did you provide the literature that went

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1 into the Web site?
 2 A. Nope.
 3 Q. Look on page 2, then, of Exhibit 6, did
 4 you provide that particular language
 5 that went into the Web site? And I am
 6 referring to the words at the top.
 7 A. Dental?
 8 Q. Dental Refining Services for Gold, that
 9 whole section. Did you provide all that
 10 material?
 11 MR. ARONSON: Outlined in the
 12 paragraphs below it?
 13 MR. ACETO: Yeah, all the
 14 written material.
 15 A. "Did you know that 10 to 15 percent,"
 16 that line?
 17 Q. Yes, that all the way down to "partner
 18 links," all the written material on
 19 page 2. Did you provide that material
 20 to the Web site designer, or did
 21 somebody else at Pease & Curren?
 22 A. Somebody else at Pease & Curren.
 23 Q. Do you -- specifically, paragraph 2,
 24 "For 85 years Pease & Curren, a

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1 family-owned," that whole paragraph, can
 2 you read that. Are you familiar with
 3 that paragraph?
 4 A. Let me read it.
 5 Q. Sure.
 6 (Witness reading over document.)
 7 A. Yup.
 8 Q. Do you agree with all the statements
 9 that are in that paragraph today?
 10 A. I do.
 11 Q. And that is an accurate statement, or
 12 the two sentences are accurate
 13 statements?
 14 A. Yes.
 15 Q. If I could turn your attention,
 16 Mr. Curren, to Exhibit No. 9. Have
 17 you ever seen that document prior to
 18 today?
 19 A. No.
 20 Q. Do you know why that document was
 21 produced in your document production?
 22 A. I do not.
 23 Q. Do you know whose handwriting that is at
 24 the top?

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1 A. I do not.
 2 Q. Do you know who Innodent is from
 3 Yarmouthport?
 4 A. I know they're a dental lab. I know
 5 they're in Yarmouthport. I know my
 6 sister went and visited them, and I know
 7 the guy ships to us still.
 8 Q. But you have no idea -- by the way, is
 9 this an assay ticket?
 10 A. It's not an assay ticket.
 11 Q. It's what, then, a tracking system
 12 printout?
 13 A. Apparently. I mean, I can't guarantee
 14 anything with this thing.
 15 Q. Let's turn to page 10 -- excuse me,
 16 Exhibit 10, have you seen this document
 17 prior to today?
 18 A. No.
 19 Q. Do you know what this is, this multiple
 20 page Exhibit 10?
 21 A. I assume it's -- without reading it, but
 22 looking at it, I assume it's sales
 23 comments that came out of the computer
 24 system for salesmen.

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1 Q. Does this relate to one particular
 2 customer of yours? Not that the
 3 customer at the top, sir, at the top of
 4 page 1 of Exhibit 10, Precious Metal
 5 Refining Services, wouldn't that be --
 6 isn't that the customer?
 7 A. I think so.
 8 Q. So all these entries relate to that one
 9 particular customer of Pease & Curren;
 10 is that right?
 11 A. Greg, do you want me to read all this to
 12 guarantee that?
 13 Q. Not really, no.
 14 A. Or do you want me to just take your word
 15 for it?
 16 Q. If you're going to say something about
 17 it, you're going to have to peruse the
 18 document.
 19 A. I am willing to help you out, man, I
 20 really am.
 21 Q. Take a second.
 22 A. I'm not -- I can't make things up unless
 23 you promise me they're okay.
 24 Q. Take a look at everything, and then try

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1 to respond.
 2 (Witness reading over document.)
 3 Q. So, Mr. Curren, all those documents that
 4 are part of Exhibit No. 10, are those
 5 entries relating to one specific
 6 customer?
 7 A. Yes.
 8 Q. Is that part of your responsibilities to
 9 oversee that particular database
 10 regarding communications with clients?
 11 A. No.
 12 Q. Who makes these entries in this
 13 database reflected in Exhibit 10?
 14 A. Well, if you look at the top in the
 15 middle you'll see initials. On this
 16 page it's MH, Mary Hone. She made the
 17 entries.
 18 Q. Is there a procedure as to why someone
 19 would make entries regarding a specific
 20 client?
 21 A. Incoming calls quite often go to
 22 customer service. Outgoing calls quite
 23 often are the result of inside sales.
 24 Q. So incoming calls get recorded in this

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1 particular system?
 2 A. No, everything gets recorded in the
 3 system. Each customer has a file in the
 4 computer.
 5 Q. And every time anyone talks to them, you
 6 make an entry in the system?
 7 A. Yeah.
 8 Q. Including yourself?
 9 A. Yeah. I don't make the entry because I
 10 don't use the computer, but I inform
 11 somebody, "Can you please make an entry
 12 that I spoke with such and such about
 13 such and such?"
 14 Q. Do you orally give them that or do you
 15 write it out?
 16 A. Yeah, orally.
 17 Q. And your administrative assistants would
 18 write it in under your initials or under
 19 their initials?
 20 A. Under their initials.
 21 Q. So they say --
 22 A. "Kip said he talked to Shelly and Shelly
 23 wants 50 kegs sent to his warehouse."
 24 Q. "Shelly," who's that in reference to --

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1 I see a reference to Sheldon something.
 2 A. Sheldon something, yeah.
 3 Q. And is he still a customer of yours?
 4 A. I don't know, but -- I'm not sure.
 5 Q. What number or estimate do you have of
 6 the customers that you have that are
 7 current customers? You said 3000
 8 before; is that right?
 9 A. Yes.
 10 Q. That's an estimate of roughly 3000
 11 active clients?
 12 A. Yeah, yeah. Guys like this. This guy
 13 is buying stuff from people, not just --
 14 he's buying stuff, he's got rubber dust.
 15 He want 25 jars to pass out to stores in
 16 his neighborhood.
 17 Q. 25 jars, what do you mean by that, 25
 18 jars of what?
 19 A. Empty jars. He wants me to put -- he's
 20 kind of -- he's a middleman.
 21 Q. Why is it that Pease & Curren produced
 22 this particular file of precious metal
 23 as opposed to another customer; do you
 24 know?

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1 A. No, I don't know. I would say that it's
 2 an example of a buyer who's a middleman
 3 who's done a lot of business with us,
 4 and there's some complaints in it, and
 5 there's some happy news in it, and
 6 sometimes he calls at night, sometimes
 7 he calls in the day. He's fairly
 8 demanding. I would say it's an example
 9 of what our guys are doing and how
 10 they're handling it.
 11 Q. Whose DD?
 12 A. Deb Dubois.
 13 Q. Exhibit No. 11, Mr. Curren, have you
 14 ever seen these documents prior to
 15 today?
 16 A. No.
 17 Q. Do you know why those particular --
 18 strike that. What are these, to your
 19 knowledge? You don't even know what it
 20 is?
 21 A. No. I know that there's some dates,
 22 some bullions, some sweeps, some
 23 amounts --
 24 Q. But do you know what database this is

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1 being printed from?
 2 A. No.
 3 Q. You don't know. Did you recognize
 4 these clients that are at the top of
 5 Exhibit 11?
 6 A. No.
 7 Q. Creative Dental, never heard of them?
 8 A. No.
 9 Q. Precision Dental?
 10 A. No.
 11 Q. Quality Plus Dental.
 12 A. No.
 13 Q. Shaw Laboratories?
 14 A. Don't know.
 15 Q. Wolfe Dental? You never heard of any of
 16 these?
 17 A. No. I mean, there's thousands of them.
 18 They're all Dental something.
 19 Q. But earlier you were saying that you
 20 don't keep the information back more
 21 than three years. Some of this
 22 information is from 2002. So do you
 23 have a lot of information relating to
 24 the amount of precious metals in

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1 particular lots in your database?
 2 A. Not that I know of.
 3 Q. Do you know who accessed these documents
 4 to provide them to me?
 5 A. I don't. I had nothing to do with
 6 discovery over here.
 7 Q. Exhibit No. 12, Mr. Curren, can you
 8 describe for me what that is, sir?
 9 A. That's a tracking system.
 10 Q. Those are typical tracking system
 11 entries?
 12 A. Yup. They got BX and XX numbers.
 13 Numbers with X's mean Pease & Curren
 14 only.
 15 Q. Let's look at Exhibit 14A and 14B,
 16 Mr. Curren. Do you recognize at least
 17 the format, if nothing else, of 14A and
 18 14B?
 19 A. Yup.
 20 Q. 14A is a typical settlement report; is
 21 that right?
 22 A. Yeah.
 23 Q. And 14B is a typical tracking system
 24 entry; correct?

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1 A. Yes.
 2 Q. For this particular line of questioning,
 3 I'm going to focus on lot B0470, which I
 4 guess is the bottom half of 14B; is that
 5 right? Correct?
 6 A. It says lot number.
 7 Q. It says lot number right there, so that
 8 would be the bottom half of the tracking
 9 system; is that right?
 10 A. Yes.
 11 Q. So according to 14B, the amount of gold
 12 that was estimated -- to use your words
 13 -- estimated in that lot was 8.656
 14 ounces; is that right, according to the
 15 entry there in the tracking assay?
 16 A. 8.65.
 17 Q. In the settlement record it's written
 18 down as 6.989 ounces; correct, which was
 19 sent to the client?
 20 A. Yeah.
 21 Q. Can you account for the difference of
 22 roughly 1.7 ounces of gold?
 23 A. Well, I can if I have -- well, first of
 24 all, I didn't settle this; however, if I

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1 did settle it, and I wanted to tell you
 2 the difference, I would have to have the
 3 assay ticket.
 4 Q. And you don't have the assay tickets for
 5 2002; correct?
 6 A. I don't have the tickets.
 7 Q. And what about the silver, if we look to
 8 the silver, 14B estimates the presence
 9 of silver in that lot at 5.33 ounces; is
 10 that accurate? Am I reading that
 11 accurate? Let me rephrase that so we
 12 don't get into this area.
 13 The statement -- the tracking
 14 system indicates that there's an
 15 estimated amount of 5.33 ounces of
 16 silver present in Lot B0470; correct?
 17 A. It does, yes.
 18 Q. And then if you go to 14A, it indicates
 19 that that lot, the notification of the
 20 client indicated that the lot had 2.21
 21 ounces; is that right?
 22 A. That's right.
 23 Q. So there's a discrepancy, a difference,
 24 if you will, of about 3.1 ounces of

1 silver?
2 A. Yes, that's true.
3 Q. And do you have an explanation -- and I
4 know you didn't settle this -- but do
5 you have an explanation as to what
6 accounts for the significant difference
7 between the amounts of silver in this
8 lot from the tracking system to the
9 statement report, settlement report?
10 MR. ARONSON: Objection. You
11 may answer.
12 A. I don't find them a significant
13 difference. I find lead retention.
14 Once again, I find the presence of
15 palladium, and the silver probably was
16 reached by subtraction of the silver and
17 some as lead.
18 Q. What about the platinum, there's a
19 difference between 14B and 14A in the
20 same lot, a difference of .15 ounces of
21 platinum. Did I read that right?
22 A. Yeah. That's not a big difference.
23 Q. Would you have an understanding of --
24 A. You're talking about one-tenth of one

1 percent. I mean, it's not a big
2 difference.
3 Q. Understanding that you didn't do the
4 settlement report, could you offer an
5 explanation as to why the amount of
6 platinum in the settlement report was
7 reduced when sent to the client?
8 A. I can't really speculate on it. I can't
9 really speculate, Greg; however, if you
10 have all the information, as I talked
11 about, in front of you, then you can
12 make a determination. I can tell you a
13 couple of things about dental alloys,
14 though, that --
15 Q. Haven't we already talked about that,
16 though?
17 A. Well --
18 Q. If it's something you haven't talked
19 about, feel free.
20 A. Okay. Just for silver sake.
21 Q. Right.
22 A. The dental alloys are loaded with
23 silver. In other words, they don't use
24 them. So you can't expect to find it in

1 a scrap.
2 Q. So you're saying if there's any reading
3 of silver, it's probably inaccurate?
4 A. Not always. They don't use 90 percent,
5 they don't have dental alloys with
6 90 percent silver. There's variations
7 of the alloy, and if you look at it
8 here, the gold is usually the highest,
9 then you see the silver. The silver is
10 really the second highest because they
11 don't use that much silver, and they use
12 a tiny amount of platinum, and then
13 palladium is the secondary metal in
14 dental alloys, just so you know. I
15 didn't mean to digress.
16 Q. Thank you. And the palladium, there's a
17 difference between 14B to 14A of about
18 .83 ounces. Can you -- understanding,
19 again, that you didn't do this
20 settlement report --
21 A. You know, 10 percent of it is our
22 charge.
23 Q. 10 percent for palladium?
24 A. Yeah.

1 Q. 10 percent or 7 percent?
2 A. 10 percent.
3 Q. Was it at some point 7 percent when
4 Bergevine worked there?
5 A. Yeah, when she started there I think it
6 was 7.
7 Q. Now it's 10 percent today. What about
8 2002?
9 A. I think it was 10 percent.
10 Q. Can you explain something to me about
11 the assay, what are those percentages
12 actually a percentage of in 14B where it
13 says Assay Percentage?
14 A. Aftermelt.
15 Q. That's a percentage of the entire lot?
16 A. No.
17 Q. So can you explain to me what that means
18 when it says Percentage?
19 A. Okay. Do you have a calculator?
20 Q. No, not in here, no. Do you really need
21 one?
22 A. Let me see if I can do it for you.
23 Q. I am more asking you what those
24 percentages reflect. Is it a percentage

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1 of all the material in the lot, or is it
 2 a percentage of the amount of precious
 3 metals?
 4 A. I was looking at this when you asked
 5 that question, so let me just look at
 6 you, and you can ask that question
 7 again.
 8 Q. I'm looking at 14B.
 9 A. I understand that.
 10 Q. I'm asking you what those percentages
 11 actually represent. It's a percentage
 12 of what, the overall weight of that lot,
 13 including all of the junk and garbage?
 14 A. No, no, no, no, no, no, no. No, no.
 15 No, no. No, no. No, no. It would be
 16 the aftermelt, aftermelt, but there
 17 would be -- you can't expect it to add
 18 up to 100 percent.
 19 Q. That's my question, it didn't add up to
 20 100 percent?
 21 A. You didn't ask that question, but now
 22 that you asked that question, let me
 23 answer it. You got base metals and
 24 other contaminants in there. Well, you

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1 can't -- when we do a sample, we -- as I
 2 said, remember we talked about a
 3 commercial sampling? There's base
 4 metals and sometimes silk or ceramic or
 5 something. Also, in the weight --
 6 that's one of the problems why -- as far
 7 as getting it homogeneous, that I was
 8 alluding to earlier.
 9 Q. If you added all these percentages up,
 10 it adds up to roughly 74 percent?
 11 A. What's the rest?
 12 Q. Exactly, what's the other 26 percent?
 13 A. It could be chromium, could be lead.
 14 Q. Could it also be dirt and garbage?
 15 A. No, no, no, no, no, no, no. We
 16 don't -- anything that will incinerate,
 17 it has to be able to withstand a certain
 18 amount of heat to still exist there, so
 19 if it was like this plastic.
 20 Q. It's gone?
 21 A. Poof.
 22 Q. I see. So it's other kind of metals
 23 that aren't precious metal that account
 24 for the other 24 percent?

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1 A. It's like burning this. Maybe the
 2 rubber will burn off, maybe the cork
 3 will burn off. That won't.
 4 Q. That's what left, the 100 percent,
 5 that's what is left over here?
 6 A. Yeah, that's what you got.
 7 Q. Let's turn to 15A and 15B for a second.
 8 A. Okay.
 9 Q. Are you familiar with this Shaw
 10 Laboratories?
 11 A. I said I didn't know really -- I don't
 12 know him.
 13 Q. Focusing on lot --
 14 A. Wyoming, Pennsylvania.
 15 Q. Lot B0410, which is the subject of 15A
 16 and 15B.
 17 A. Okay.
 18 Q. According to the settlement report,
 19 there was 37.8 ounces of gold in this
 20 particular lot, and according to the
 21 tracking system entry it was 46 ounces
 22 of gold. So understanding again that
 23 you didn't do this settlement report,
 24 can you account for the discrepancy of a

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1 little over eight ounces of gold?
 2 A. I'm not sure it's a discrepancy, but
 3 there is a difference.
 4 Q. There is a difference?
 5 A. There is a difference, Greg.
 6 Q. What's accounts for that difference?
 7 A. Look at the percentages once again.
 8 Very high gold percentage. Is that
 9 realistic? I mean, I can't account for
 10 it.
 11 Q. And there's about 25 percent missing.
 12 Does that indicate something to you?
 13 A. No, no, no, no. No, no, no, no. Look
 14 at the platinum/palladium ratios.
 15 Q. What does that mean to you?
 16 A. That means to me that this was probably
 17 not even dental scrap. That's some
 18 jewelry scrap put in there and doesn't
 19 fall into the jewelry scrap guideline.
 20 But as far as the difference in figures,
 21 as far as the 55 percent being real, is
 22 that a real number? Is that a good
 23 number that we're going to pay on? I'd
 24 have to see this -- it's 95-ounce bar of

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1 flash crowns and grinds. Let me tell
 2 you something, Greg. I know what a
 3 flash looks like; I know what crowns
 4 look like; I know what grinds look like.
 5 We might have paid this guy 30 ounces
 6 too much because I get really scared
 7 when I see flash and grinds because I
 8 paid a lot of flash and grinds that
 9 don't look like this, so -- it isn't
 10 dental scrap, that's for sure.
 11 Q. What about palladium then, palladium,
 12 there's a difference of about two ounces
 13 of palladium at \$3.46 an ounce. With
 14 your understanding of what is entailed
 15 in the settlement report, can you
 16 account for that difference?
 17 A. I can't. I can't. I would like to
 18 know. I would like to know whether this
 19 weight is correct.
 20 Q. The overall weight?
 21 A. Yeah. You know what I am saying? Like
 22 if I was paying this job, Greg, you
 23 would see Kip Curren going into the back
 24 and going, "Boys, get this job out here."

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1 It's flash, it's crowns, it's grinds.
 2 Those usually lose 50 percent of their
 3 weight. If you wrote down 82 and it was
 4 used -- supposed to be 32, I am going to
 5 pay this guy 20 ounces too much, so find
 6 it and weigh it in front of me."
 7 Q. So you find it and weigh it again?
 8 A. Yeah. I am looking at this, and if I
 9 had to bet on this thing, this is a
 10 goof-up and we overpaid.
 11 Q. You paid him too much money?
 12 A. Yeah. Quite a goof-up to me.
 13 Q. Let's go back to Miss Bergevine for a
 14 couple of minutes. Miss Bergevine, when
 15 she left, she resigned; is that right?
 16 A. She did, yeah.
 17 Q. Did you have any negative evaluations in
 18 her personnel file when she left there?
 19 A. No.
 20 Q. Did you have any complaints from
 21 customers regarding her performance for
 22 the time she worked there?
 23 A. Yes.
 24 Q. How many complaints?

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1 A. A few.
 2 Q. More than two?
 3 A. Yes.
 4 Q. More than five?
 5 A. Yes.
 6 Q. More than ten?
 7 A. Yes.
 8 Q. More than 20?
 9 A. Yes, but she was there a long time.
 10 Q. She was there about six years.
 11 A. Yeah. So it wasn't -- it wasn't -- I
 12 wouldn't characterize her as anything
 13 but a good salesperson, but she was
 14 aggressive. Some people, they don't
 15 like the aggressive nature, aggressive
 16 women nature. And then, of course,
 17 other people loved her, so it was --
 18 Q. So the complaints were of what nature,
 19 that she was too aggressive with them?
 20 A. One guy told me that she belonged on the
 21 back of a Harley. Yeah. It had to do
 22 with she's out to get the business,
 23 she's not going to take no for an
 24 answer.

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1 Q. Was she doing anything that she was
 2 turning away customers?
 3 A. I would say there was some customers
 4 that I said, "Trish, don't call them
 5 anymore. We'll have somebody else call
 6 that person."
 7 Q. This is in the dental field?
 8 A. Yeah.
 9 Q. But you kept her around and increased
 10 her compensation structure over time;
 11 correct?
 12 A. I did, yeah.
 13 Q. In fact, you wanted to make her an
 14 employee and integrate her into the
 15 sales force?
 16 A. I did. I wanted her to make some real
 17 dough. I figured she'd paid her dues,
 18 it was time to come into the sales
 19 force. I thought she could do it. I
 20 thought she could be part of my company,
 21 and she had a partner, and they would
 22 have some teamwork, and they would make
 23 me money, and they would bring me in
 24 customers, and the type of customers I

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1 wanted.
 2 Q. And did they, during the time they were
 3 together, Miss Bergevine and Miss
 4 Granger?
 5 A. No.
 6 Q. They didn't?
 7 A. No.
 8 Q. It was a disaster?
 9 A. No. They quit in, I think, June or
 10 July, but they really quit in February.
 11 Q. Why do you say that?
 12 A. They just stopped working.
 13 Q. Do you have an understanding that they
 14 went to work for a competitor?
 15 A. After they left us, yeah.
 16 Q. But not immediately after they left you?
 17 A. Fairly immediately. Within a month or
 18 two.
 19 Q. Do you have an understanding how long
 20 they worked at that company?
 21 A. Several years.
 22 Q. Several years. What do you base that
 23 understanding on?
 24 A. Just what I hear from people around my

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1 company who are in touch with the other
 2 company. I base some of it on her
 3 deposition, which I was present at.
 4 Q. Right. Did any of your customers, to
 5 your knowledge, your Pease & Curren
 6 customers, go to -- we're talking about
 7 Advanced Chemical. Did any of your
 8 clients, that you know of, switch at
 9 that time in 2002 from you to Advanced
 10 Chemical?
 11 A. Yes.
 12 Q. How many customers?
 13 A. I don't know.
 14 Q. More than a couple?
 15 A. Yeah.
 16 Q. Do you have an understanding that
 17 Miss Bergevine was soliciting them?
 18 A. I know positively she was soliciting
 19 them.
 20 Q. Which ones do you know of that she was
 21 soliciting?
 22 A. I don't know off the top of my head
 23 which ones she was soliciting, but I
 24 know she was soliciting in her

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1 territory, and Bethany was soliciting in
 2 hers, and I hired two more people to
 3 retain our customers, and they basically
 4 would be coming back saying, "Gee, I
 5 talked to some dental lab, and Trish
 6 talked to them yesterday. I am talking
 7 to them tomorrow," that type of stuff,
 8 you know?
 9 Q. You're not aware of any non-compete that
 10 Miss Bergevine signed with the company?
 11 A. No.
 12 MR. ACETO: Why don't we take a
 13 break for two minutes. I am very close
 14 to being done. If we can take a three-
 15 minute break.
 16 (Whereupon there is a brief
 17 recess.)
 18 Q. You said, Mr. Curren, that each client
 19 has a file in the computer system.
 20 Besides the sales calls, is there
 21 anything else in a particular client's
 22 file?
 23 A. No.
 24 Q. So that what you're saying is there was

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1 a file, the file is solely for the sales
 2 call-in log or whatever you called it
 3 before?
 4 A. As you saw with the client Shelly, no
 5 matter who talks to Shelly, it gets
 6 recorded, so Shelly is all in one place,
 7 so we can kind of go over things.
 8 Q. But it's not for the purpose of solenoid
 9 boards or the tracking system?
 10 A. No.
 11 Q. The file is just for sales amounts. It
 12 has the call-ins and call-outs, like an
 13 insurance company recording everything
 14 that is discussed with a customer in the
 15 computer system?
 16 A. Or a hospital.
 17 Q. Or a hospital?
 18 A. Yeah.
 19 Q. If we could turn back to Exhibit 1, that
 20 information under Refining Terms in
 21 Exhibit No. 1, although you say it never
 22 went out to any of the clients, is that
 23 accurate information as to the charges?
 24 I'm asking you just to focus on the

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1 Refining Terms.
 2 MR. ARONSON: At what time are
 3 you talking about?
 4 MR. ACETO: Of when this was
 5 created.
 6 A. Well, see the bottom, combined high
 7 grade low grade received at the same
 8 time, 150?
 9 Q. Yes.
 10 A. That's a bunch of hogwash.
 11 Q. Why is that?
 12 A. Well, why would I do two lots for the
 13 price of one?
 14 Q. So that is not accurate how you do your
 15 charging, No. 3?
 16 A. No, no.
 17 Q. What about 1 and 2, are those accurate
 18 statements as to the charging for dental
 19 industry lots at Pease & Curren?
 20 A. No.
 21 Q. Why don't we do No. 1 first. Is No. 1
 22 accurate?
 23 A. Yup.
 24 Q. Number 1 is accurate in its entirety?

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1 A. Yup.
 2 Q. Is No. 2 accurate in its entirety?
 3 A. No.
 4 Q. What is not accurate as to your charges
 5 for dental industry lots?
 6 A. No, incoming weight on the seventy-five
 7 cents incoming; in other words, we have
 8 the afterburn.
 9 Q. Where are you reading that from?
 10 A. B.
 11 Q. B, charges 125 minimum?
 12 A. No, below that.
 13 Q. Refining at \$2.00 per pound?
 14 A. Afterburn.
 15 Q. Afterburn weight. That's not accurate.
 16 No. 1, refining at \$2.00 per pound?
 17 A. Oh, no. It's seventy-five cents
 18 incoming is omitted.
 19 Q. Can you just explain to me what you mean
 20 by that?
 21 A. Well, we talked before about how we're
 22 trying to get the guys not to just send
 23 everything in to us. In order to do
 24 that, we have a charge, so they have an

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1 incentive not to just fill their drums
 2 up with non-precious metal bearing
 3 scrap. To do that we charge them
 4 seventy-five cents a pound weight
 5 received as opposed to \$2.00 a pound
 6 afterburn in addition.
 7 Q. So it's just seventy-five cents per lot
 8 per pound prior to burn?
 9 A. Oh, yeah.
 10 Q. But it's not --
 11 A. It's both.
 12 Q. It's seventy-five for the weight
 13 initially?
 14 A. Incoming.
 15 Q. And then \$2.00 per pound --
 16 A. -- afterburn. Remember we talked about
 17 the sludge? It was 2000 pounds and it
 18 didn't burn down and all that.
 19 Q. So where do you account for that in one
 20 of these typical settlement reports that
 21 you send out? Where do you account for
 22 those charges for the weight? In, like,
 23 16A, where do you account for the
 24 charges for the afterburn rate and the

220

1 preburn rate? Where is that reflected
 2 on?
 3 A. It's a bullion meltdown.
 4 THE STENOGRAPHER: I'm sorry,
 5 what did you say?
 6 THE WITNESS: A bullion,
 7 b-u-l-l-i-o-n.
 8 Q. This particular one?
 9 A. That's a bullion.
 10 Q. What about --
 11 A. Find me a sweep.
 12 Q. How about 15A?
 13 A. Bullion.
 14 Q. 14A?
 15 A. It's a bullion.
 16 Q. What do you mean by that, it's a
 17 bullion?
 18 A. See the B number?
 19 Q. You mean the lot number?
 20 A. The B is for bullion, the S is for
 21 sweep.
 22 Q. What's the difference between bullion as
 23 opposed to a sweep, then?
 24 A. See, essentially the opposite. A

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1 bullion is meltable, and a sweep has to
 2 be incinerated, ball mill and screened.
 3 Q. Is there a weight charge on a bullion
 4 delivery, then?
 5 A. Yes, there is.
 6 Q. Let's take 14A, where is that weight
 7 charge on this for bullions?
 8 A. \$50.
 9 Q. That's the per pound --
 10 A. -- ounce.
 11 Q. Excuse me, per ounce?
 12 A. 48 ounces. If it was 51 ounces, it
 13 would be \$51.
 14 Q. What about 18A, that indicates it's a
 15 sweep.
 16 A. All right, we got a sweep boys, 14-pound
 17 sweep. Charge is 100 bucks. If it was
 18 1400 pounds, I would multiply 14 pounds
 19 incoming times .75, and that charge
 20 would be reflected right here.
 21 MR. ACETO: I have no further
 22 questions. Thank you, Mr. Curren.
 23 THE WITNESS: Thank you.
 24 (Whereupon the deposition was
 concluded at 4:05 p.m.)

1 COMMONWEALTH OF MASSACHUSETTS)
 COUNTY OF ESSEX)

2 I, Joan Applegate, C.S.R., a
 3 notary public in and for the
 Commonwealth of Massachusetts, do hereby
 4 certify that Francis H. Curren, III was
 by me first duly sworn, to testify to
 5 the truth, the whole truth, and nothing
 but the truth, and that the above
 6 deposition, pages 9 through 221
 inclusive, was recorded stenographically
 7 by me and reduced to typewriting by me.

8 I FURTHER CERTIFY that the
 foregoing transcript of the said
 9 deposition is a true and correct
 transcript of the testimony given by the
 10 said witness at the time and place
 specified hereinbefore.

11 I FURTHER CERTIFY that I am not a
 12 relative or employee or attorney or
 counsel of any of the parties, nor a
 13 relative or employee of such attorney or
 counsel, or financially interested
 14 directly or indirectly in this action.

15 IN WITNESS WHEREOF, I have
 hereunto set my hand and seal of office
 16 at Saugus, Massachusetts, this 14th day
 of August, 2006.

17
 18
 19 Joan Applegate
 Certified Shorthand Reporter
 Notary Public

20
 21 My notary commission expires:
 22 March 29, 2007.
 23
 24

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1 SIGNATURE PAGE/ERRATA SHEET
 2 RE: BERGEVINE VS. PEASE & CURREN
 3 DATE: 7/25/06
 4 DEPOSITION OF: FRANCIS H. CURREN, III
 5

6 I, Francis H. Curren, III, do
 hereby certify that I have read the
 7 foregoing transcript of my testimony and
 it is a true and correct record of my
 8 testimony (with the exception of the
 corrections, if any, listed below.)
 9 PAGE LINE CORRECTION

10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____

20 Signed under the pains and
 21 penalties of perjury this _____ day of
 22 _____, 2006.

23 _____
 24 FRANCIS H. CURREN, III